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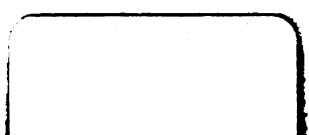
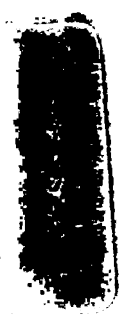
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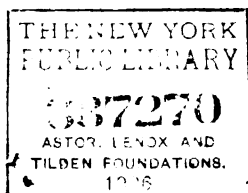
REPORT
OF
ROBERT C. MORRIS,
AGENT OF THE UNITED STATES,
BEFORE
THE UNITED STATES AND VENEZUELAN
CLAIMS COMMISSION,
*Organized under the Protocol of February 17, 1903,
between the United States of America and
the Republic of Venezuela.*



WASHINGTON:
GOVERNMENT PRINTING OFFICE.

1904.

Checked
May 1913



WIDY WAB
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UNITED STATES AND VENEZUELAN CLAIMS COMMISSION.

REPORT OF ROBERT C. MORRIS, AGENT OF UNITED STATES.

The Honorable JOHN HAY,
Secretary of State of the United States, Washington, D. C.

SIR: The undersigned has the honor to submit the following report as agent of the United States before the United States and Venezuelan Claims Commission, organized under the protocol of an agreement between the Secretary of State of the United States of America and the plenipotentiary of the Republic of Venezuela, signed at Washington, February 17, 1903:

By the protocol it was provided that the Commission should consist of two members, one of whom should be appointed by the President of the United States, and the other by the President of Venezuela. It was also provided that an umpire should be named by the Queen of the Netherlands.

Hon. William E. Bainbridge was appointed as the Commissioner on the part of the United States, and, after having duly qualified, served until the conclusion of the work of the Commission.

Hon. José de Jesus Paúl was appointed as Commissioner on the part of Venezuela, and duly qualified as such. Mr. Paúl served as Commissioner on the part of Venezuela until it became necessary for him to appear before the tribunal of The Hague as a representative of Venezuela on the question of preferential treatment of the claims of certain nations, and also to proceed to Paris in fulfillment of his duties as Commissioner on the Franco-Venezuelan Mixed Commission. He resigned as Commissioner on the 16th of October, 1903.

Hon. Carlos F. Grisanti was appointed as Commissioner on the part of Venezuela, in the place of Mr. Paúl, and, after having duly qualified as Commissioner on October 24, 1903, served until the conclusion of the work of the Commission.

Hon. Charles Augustinus Henri Barge was named by the Queen of the Netherlands as the umpire and, after having duly qualified, served until the termination of the work.

The undersigned was appointed as the agent of the United States to present and support claims submitted by his Government on behalf of citizens of the United States, pursuant to the provisions of the protocol.

W. T. Sherman Doyle, esq., was designated by the Department of State to accompany me to Caracas and assist me in the prosecution of the claims. Miss Margaret M. Hanna, of the Department of State, was assigned by the Department to accompany me to Caracas and assist in the work on the claims.

Hon. F. Arroyo-Parejo, the attorney-general of Venezuela, was appointed as the agent of Venezuela, pursuant to the terms of the protocol.

Rudolf Dolge, esq., was duly appointed as secretary on the part of the United States and continued to act as such until the conclusion of the Commission's labors.

J. Padron-Uztariz, esq., was duly appointed secretary on the part of Venezuela. Mr. Padron continued to serve in this capacity until the departure of Mr. Paúl, whom he accompanied to Europe.

Eduardo Calcaño Sanavria, esq., was duly appointed as the secretary on the part of Venezuela in place of Mr. Padron on October 24, 1903, and continued to act until the conclusion of the work of the Commission.

The Commission first met and organized at the "Casa Amarilla," Caracas, Venezuela, on the 1st day of June, 1903, each of the Commissioners and the umpire making and subscribing the solemn oath provided by article 1 of the protocol. This oath was administered by Hon. J. F. Castillo, judge of the court of the department libertador in the Federal District, in the following form:

We, the undersigned umpire and Commissioners, appointed on the Commission provided for in the protocol of an agreement signed at Washington, February 17, 1903, between the United States of America and the Republic of Venezuela, do severally and solemnly swear that we will carefully examine and impartially decide according to justice and the provisions of said convention all claims submitted to us in conformity with the terms of said convention.

On Tuesday, June 9, the Commission adopted rules for the proceedings before it, providing for the presentation, prosecution, and defense of claims, a copy of which rules is hereto annexed.

At the time I went to Caracas twenty-eight claims had been submitted to me by the Department of State for presentation to the Commission. Thirty-seven claims were on file in the Department, but nine of them were lacking in evidence and were for the time laid aside. The claimants in these matters were communicated with and a few of them finally produced sufficient evidence to warrant the presentation of their claims. These twenty-eight claims were arranged in groups according to the principles involved, and were so presented in order that the labors of the Commission might be simplified. Subsequently twenty-seven additional claims, including some of the nine claims above mentioned, were presented by me to the Commission in the order in which they were received. Thus within the time limited by the protocol fifty-five claims were presented.

In support of these claims, sixty-four separate pleadings were filed with the Commission by me as agent of the United States under rule 4 of the rules of the Commission.

In presenting a claim I always made a verbal statement of the facts, discussing and arguing the principles involved, and submitted a written brief, if the circumstances required.

When the pleadings on behalf of Venezuela were filed with the Commission they were in the Spanish language and had to be translated into the English language and typewritten. Nearly all of this work was done by Mr. Doyle and Miss Hanna, who were proficient in the Spanish language and rendered services of the greatest possible value. In addition, much of the evidence presented had to be translated by them from Spanish documents and typewritten. The memorials, evidence, and pleadings presented to the Commission on behalf of the

United States were in sextuple, either printed or typewritten, one copy being given to each of the Commissioners, one to the umpire, one to the agent of Venezuela, one copy was retained by me as agent of the United States, and the sixth copy was forwarded to Washington for the files of the Department of State.

After the conclusion of my work as the agent of the United States, and my return, it was deemed advisable to have a representative of the United States at Caracas, to appear before the Commission, if necessary, in behalf of the Orinoco Steamship Company, one of the claimants, and Mr. Doyle was appointed assistant agent of the United States for this purpose on October 30. This case had been fully submitted during the month of June, as hereinafter appears, but it was thought probable that it might have to be reopened. It did not become necessary to reopen the case and Mr. Doyle returned to the United States on December 7.

The following schedule shows a summary of the procedure in relation to each of the claims presented, with reference to the official copy of minutes of the Commission on file in the Department of State. A list of the documents filed with the Commission in each claim is also set forth.

No. 1.

CLAIM OF FORD DIX.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$16,381.15; interest, \$1,474.30.

Claim filed June 9 (Min., p. 15). Oral presentation. Brief in support.

Filed supplemental evidence June 16, nunc pro tunc (Min., p. 21).

Answer by Venezuela June 26 (Min., p. 31).

Replication filed July 1 (Min., p. 37).

Award for \$11,837.53 in United States gold July 7 (Min., p. 45).

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Supplemental documents; Answer; Replication; Decision and award in English; Decision and award in Spanish; Opinion in English; Opinion in Spanish.

No. 2.

CLAIM OF CATALINA V. PAEZ AND JOSÉ PAEZ.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$2,400; interest, \$392.15.

Claim filed June 9 (Min., p. 15). Oral presentation. Brief in support.

Admitted by agent of Venezuela, except interest to be calculated, June 19.

Award for \$2,550 in United States gold July 1 (Min., p. 35).

Opinion by Paúl, Commissioner.

REPORT OF ROBERT C. MORRIS.

LIST OF DOCUMENTS.

Memorial; Brief; Decision and award in English; Decision and award in Spanish; Opinion in English; Opinion in Spanish.

No. 3.

CLAIM OF CORINNE B. DE GARMENDIA.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$79,167; interest, \$32,127.63.

Claim filed June 9 (Min., p. 15). Oral presentation. Brief in support.

Filed supplemental evidence June 16, nunc pro tunc (Min., p. 21).

Answer by Venezuela June 26 (Min., p. 31).

Award for \$29,363.64 in United States gold July 3 (Min., p. 41).

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Supplementary documents; Decision and award in English; Decision and award in Spanish; Opinion in English; Opinion in Spanish; Answer.

No. 4.

CLAIM OF CORO AND LA VELA RAILWAY IMPROVEMENT COMPANY.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$54,000; interest, \$8,598.80.

Claim filed June 9 (Min., p. 15). Oral presentation. Brief in support.

Admitted by agent of Venezuela June 19.

Award for \$61,104.70 in United States gold, July 1 (Min., p. 35).

Opinion by Paúl, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Decision and award in English; Decision and award in Spanish; Opinion in English; Opinion in Spanish.

No. 5.

CLAIM OF AMES FOUNDRIES.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$1,100; interest, \$74.01.

Claim filed June 9 (Min., p. 15). Oral presentation. Brief in support.

On June 23 the agent of Venezuela announced that his Government was desirous of entering into negotiations for the settlement of this claim. The Commission thereupon decided that pending negotiations for such settlement no prejudice under the rules should accrue to the Government of Venezuela until the acceptance or rejection of the

proposition of the Venezuelan Government by or through the Government of the United States (Min., p. 22).

Proposition received from Venezuelan Government to carry out contract, and transmitted to Department of State for instructions June 27.

Reply of Ames Foundries July 27, and presented to the agent of Venezuela at session of Commission July 28 (Min., p. 73).

Answer by Venezuelan Government August 18, and transmitted to Department of State August 22.

Acceptance of Ames Foundries received by Commission September 29 (Min., p. 133) and referred to agent of Venezuela with request that he notify his Government and obtain proofs of compliance with the stipulations of the new agreement so that they might be embodied in the files of the Commission and the claim be formally retired (Min., p. 123). The agent of Venezuela presented copies of the orders of payment issued by the minister of the treasury and the Bank of Venezuela in settlement of this claim November 4. Commission finally disposed of this claim by dismissing it without prejudice in view of the settlement arranged for December 9.

LIST OF DOCUMENTS.

Memorial; Brief; Correspondence covering proposition and acceptance; Copies of orders of payment issued by minister of treasury and bank in settlement of claim; Decision in English; Decision in Spanish.

No. 6.

CLAIM OF EMERICH HENY.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$29,925.11; interest, \$8,789.19.

Claim filed June 12 (Min., p. 17). Oral presentation. Brief in support.

Extension of five days' time from July 1 for answer by Venezuela (Min., p. 35).

Answer filed July 6 (Min., p. 45).

Replication filed July 13 (Min., p. 53).

Rejoinder filed July 17 (Min., p. 57).

Commissioners disagreed in written opinions, and claim referred to umpire July 28 (Min., p. 69).

Award by the umpire for \$23,954.25 in United States gold, August 11 (Min., p. 91).

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Replication; Original contract between Heny and Benitz heirs (returned to claimant); Rejoinder; Copy of Remstedt contract; Copy of Ortega Martinez contract; Opinion by Bainbridge, Commissioner, in English; Opinion by Bainbridge, Commissioner, in Spanish; Opinion by Doctor Paúl, Commissioner, in English; Opinion by Dr. Paúl, Commissioner, in Spanish; Decision and award by umpire in Spanish; Decision and award by umpire in English; Opinion by umpire in English; Opinion by umpire in Spanish.

No. 7.

CLAIM OF ERNEST C. BLISS, WILLIAM B. BOULTON, JOHN SCHIMMELL,
AND FREDERICK A. DALLETT, PARTNERS, DOING BUSINESS AS BOUL-
TON, BLISS & DALLETT.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$49,428.27; interest, \$5,506.25.

Claim filed June 12 (Min., p. 17). Oral presentation. Brief in support.

Answer filed July 1 (Min., p. 35).

Replication filed July 3 (Min., p. 41).

Award for \$27,644.23 in United States gold, July 17 (Min., p. 57).

Opinion by Paul, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Replication; New proofs; Decision and award in English; Decision and award in Spanish; Opinion in English.

No. 8.

CLAIM OF LEONARD B. SMITH, OWNER OF THE SCHOONER ALLIANCE.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$6,239.32; interest, \$1,007.65.

Claim filed June 12 (Min., p. 17). Oral presentation. Brief in support.

Answer filed July 1 (Min., p. 35).

Replication filed July 1 (Min., p. 37).

Supplemental memorial filed July 1 (Min., p. 37).

Award for \$2,928.33 in United States gold July 14 (Min., p. 53).

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Replication; Supplementary memorial as to present ownership of claim; Decision and award in English; Decision and award in Spanish; Opinion in Spanish; Opinion in English.

No. 9.

CLAIM OF A. T. STUBBS.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$100; interest, \$70.25.

Claim filed June 12 (Min., p. 17). Oral presentation. Brief in support.

Answer filed July 1 (Min., p. 35).

Claim disallowed July 10 by Commission (Min., p. 49).

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Decision in English; Decision in Spanish.

No. 10.

CLAIM OF J. S. EMERY & Co., OWNERS OF THE SCHOONER MARK GRAY.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$1,537.50; interest, \$338.25.

Claim filed June 12 (Min., p. 17). Oral presentation. Brief in support.

Answer filed July 1 (Min., p. 35).

Replication filed July 3 (Min., p. 41).

Claim disallowed July 17 (Min., p. 57).

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Replication; Opinion in English; Opinion in Spanish.

No. 11.

CLAIM OF THE AMERICAN AND ELECTRIC MANUFACTURING COMPANY.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$6,000; interest, \$272.50.

Claim filed June 12 (Min., p. 51). Oral presentation. Brief in support.

Answer filed July 1 (Min., p. 37).

Award for \$2,000 in United States gold July 21 (Min., p. 63).

Opinion by Paúl, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Decision and award in English; Decision and award in Spanish; Opinion in English; Opinion in Spanish.

No. 12.

CLAIM OF ISAAC J. LASRY.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$15,880.

Claim filed June 12 (Min., p. 17). Oral presentation. Brief in support.

Answer filed July 1 (Min., p. 37).

Additional evidence submitted July 16 (Min., p. 59).

Rejected July 21 (Min., p. 63).

Award for \$2,000 in United States gold July 21 (Min., p. 63).

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Additional evidence; Decision and award in English; Decision and award in Spanish; Opinion in English; Opinion in Spanish.

No. 13.

CLAIM OF ELIAS ASSAD FLUTIE.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$80,000.

Claim filed June 16 (Min., p. 21). Oral presentation. Brief in support.

Answer filed July 1 (Min., p. 37).

Replication filed July 7 (Min., p. 45).

Claim dismissed without prejudice for want of citizenship August 1 (Min., p. 77).

Thirteen and 14 joined in opinion rendered by Bainbridge, Commissioner.

Additional evidence as ground of reopening presented to Commission October 16. Rejected same day (Min., p. 143).

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Replication; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 14.

CLAIM OF EMELIA ALSOUS FLUTIE.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$21,500.

Claim filed June 16 (Min., p. 21). Oral presentation. Brief in support.

Answer filed July 1 (Min., p. 37).

Replication filed July 7 (Min., p. 45).

Claim dismissed without prejudice for want of citizenship August 1 (Min., p. 77).

Opinion, see No. 13.

Additional evidence as ground of reopening presented to Commission October 16. Rejected same day (Min., p. 143).

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Replication; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 15.

CLAIM OF GEORGE FREEMAN UNDERHILL AND JENNIE LAURA UNDERHILL, HIS WIFE.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$332,316.28.

Claim filed June 16 (Min., p. 21). Oral presentation. Brief in support.

Extension of ten days' time from July 1 for answer by Venezuela (Min., p. 35).

Answer filed July 10 (Min., p. 49).

Replication filed July 17 (Min., p. 57).

Commissioners disagreed in written opinions and claim was referred to umpire September 8 (Min., p. 113).

Decision by umpire dismissing claim of George Freeman Underhill for want of evidence as to the right of Jennie Laura Underhill to appear as claimant in place of her deceased husband, October 31 (Min., p. 155).

Memorandum forwarded on November 28 with letters of administration of Jennie Laura Underhill, asking that the claim of George Freeman Underhill by his administratrix be considered, and asking that claim of Jennie Laura Underhill be considered.

Commission received above December 9 and reserved decision until next session (Min., p. 167). On December 12 Commission decided not to admit the new evidence presented, in view of the terms of the protocol and of rule 4 of the procedure of the Commission.

Award for \$3,000 by umpire to Jennie Laura Underhill in United States gold November 28 (Min., p. 165).

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Replication; Supplementary memorial of J. L. Underhill; eight original photographs; Opinion by Bainbridge, Commissioner, in English; Opinion by Bainbridge, Commissioner, in Spanish; Opinion by Paúl, Commissioner, in English; Opinion by Paúl, Commissioner, in Spanish; Decision by umpire on claim of G. F. Underhill in English; Decision by umpire on idem in Spanish; Decision by umpire and award in English; Decision and award by umpire in Spanish; Opinion by umpire in English; Opinion by umpire in Spanish.

No. 16.

CLAIM OF THE ADMINISTRATRIX AND HEIRS AT LAW OF GIOVANNI TURINI, DECEASED, THE GORHAM MANUFACTURING COMPANY, AND JOSEPH CARABELLI.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$23,870; interest, \$4,709.55.

Claim filed June 16 (Min., p. 21). Oral presentation. Brief in support.

Extension of ten days' time from July 1 for answer by Venezuela (Min., p. 35).

Answer filed July 10 (Min., p. 49).

Replication filed July 16.

Commissioners disagreed in written opinions and claim referred to umpire August 4 (Min., p. 83).

Award for \$19,611.60 in United States gold August 21 (Min., p. 101).

Reservation for Gorham Manufacturing Company, \$6,319 in United States gold and interest at 6 per cent from July 1, 1897. Joseph Carabelli, \$3,095 in United States gold and interest at 6 per cent from October 22, 1898 (Min., p. 101).

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Replication; Opinion by Bainbridge, Commissioner, in English; Opinion by Bainbridge, Commissioner, in Spanish; Opinion by Paúl, Commissioner, in English; Opinion by Paúl, Commissioner, in Spanish; Decision and award by umpire in English; Decision and award by umpire in Spanish; Opinion by umpire in English; Opinion by umpire in Spanish.

No. 17.

CLAIM OF MARGARET TURINI AS ADMINISTRATRIX OF GIOVANNI TURINI.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$1,009.61; interest, \$132.62.

Claim filed June 16 (Min., p. 21). Oral presentation. Brief in support.

Extension of time until July 10 to file amendment granted July 1 (Min., p. 37).

Extension of ten days from filing amendment to answer (Min., pp. 35 and 37).

Additional statement filed July 7 (Min., p. 45).

Answer filed July 10 (Min., p. 49).

Award for \$1,140.86 in United States gold August 1 (Min., p. 75).

Opinion by Paúl, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Supplemental proof fixing amount of claim; Answer; Decision and award in English; Decision and award in Spanish; Opinion by Paúl, Commissioner, in English; Opinion by Paúl, Commissioner, in Spanish.

No. 18.

CLAIM OF HENRY R. KUHNHARDT, GEORGE W. KULHKE, AND FRANZ MUELLER, PARTNERS, AS KUHNHARDT & Co.

SUMMARY OF PROCEEDINGS.

Amount claimed: First claim, \$46,875; second claim, \$19,211.94.

Claim filed June 16 (Min., p. 21). Oral presentation. Brief in support.

Claim supplemental to second claim filed June 23 (filed nunc pro tunc, but Venezuela allowed fifteen days from date to answer this supplemental claim). Amount claimed, \$2,635.77 (Min., p. 29).

Extension of ten days' time from July 1 for answer by Venezuela (Min., p. 35).

Answer filed July 10 (Min., p. 49).

Replication filed July 16.

First claim disallowed without prejudice August 18.

Second claim, award for \$13,947, August 18 (Min., p. 97).

Separate opinions by Commissioners.

LIST OF DOCUMENTS.

Memorial; Brief; Pamphlet; Supplementary claim and brief, nunc pro tunc; Answer; Replication; Decision and award in English; Decision and award in Spanish; Opinion in English; Opinion in Spanish.

No. 19.

CLAIM OF THE ORINOCO STEAMSHIP COMPANY.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$1,401,539.05.

Claim filed June 16 (Min., p. 23). Oral presentation. Brief in support.

Extension of ten days' time from July 1 for answer by Venezuela (Min., p. 35).

Motion to amend memorial July 7. Granted (Min., p. 45).

Motion made July 10 to extend time for answer by Venezuela to July 14. Granted (Min., p. 49).

Answer filed July 14 (Min., p. 53).

Extension of ten days' time for replication by United States granted July 17 (Min., p. 59).

Replication filed July 25 (Min., p. 71). Presented to Commission July 28.

The Commissioners disagreed in written opinions, and claim was referred to umpire December 9 (Min., p. 167).

Award for \$28,224.93 in United States gold February 20, 1904.

LIST OF DOCUMENTS.

Memorial; Brief; Two pamphlets and typewritten insertions; Amendment of memorial; Answer; Original document as part of answer, ten days' extension granted agent of United States to file replication; Replication; One original exhibit "A;" One original exhibit "B;" One original exhibit "C;" Opinion by Doctor Grisanti, Commissioner, denies jurisdiction and disallows claim; Opinion by Bainbridge, Commissioner, admits jurisdiction and holds that an award should be made thereon; Opinion by umpire.

No. 20.

CLAIM OF FRANCES IRENE ROBERTS, ADMINISTRATRIX OF THE ESTATE AND SOLE HEIR AT LAW OF WILLIAM QUIRK, DECEASED.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$187,168.03.

Claim filed June 19 (Min., p. 25). Oral presentation. Brief in support.

Extension of ten days' time from July 3 for answer by Venezuela (Min., p. 41).

Answer filed July 14 (Min., p. 35).

Extension of ten days' time for replication by United States granted July 17 (Min., p. 59).

Replication filed July 24 (Min., p. 69).

Award for \$18,154.61 in United States gold August 25 (Min., p. 103).

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Replication; Decision and award in English; Decision and award in Spanish; Opinion in English; Opinion in Spanish.

No. 21.

CLAIM OF SUSANNA MAUD JARVIS AND REBECCA JOSEPHINE JARVIS.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$81,000; interest, \$227.529.

Claim filed June 19 (Min., p. 25). Oral presentation. Brief in support.

Filed memorandum regarding assignments under this claim June 19 (Min., p. 25).

Extension of ten days' time from July 3 for answer by Venezuela (Min., p. 41).

Answer filed July 14 (Min., p. 53).

Extension of ten days' time for replication by United States granted July 17 (Min., p. 59).

Replication filed July 28.

Claim disallowed September 18.

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Replication; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 22.

CLAIM OF HENRY WOODRUFF.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$46,000; interest, \$176,182.42.

Claim filed June 19 (Min., p. 25). Oral presentation. Brief in support.

Extension of ten days' time from July 3 for answer by Venezuela (Min., p. 41).

Answer filed July 14 (Min., p. 53).

Extension of ten days' time for answer by United States granted July 17 (Min., p. 59).

Contract of recession made about December 19, 1863, by Rojas & Mercano. Requested by Commission of United States September 8 (Min., p. 115).

Contract produced September 11 (Min., p. 117).

Commissioners disagreed and claim referred to umpire on September 18 (Min., p. 121).

Claim dismissed by umpire without prejudice for want of jurisdiction on October 2.

LIST OF DOCUMENTS.

Memorial; brief; answer; facsimile of bonds; Contract of December 19, 1863; Opinion by Bainbridge, Commissioner, in English; Opinion by Bainbridge, Commissioner, in Spanish; Opinion by Doctor Paúl, Commissioner, in English; Opinion by Doctor Paúl, Commissioner, in Spanish; Additional expediente of ministry of public works received from Venezuelan Commissioner; Decision by umpire in English; Decision by umpire in Spanish; Opinion by umpire in English; Opinion by umpire in Spanish.

No. 23.

CLAIM OF WILLIAM V. SPADER AND OTHERS, HEIRS AND LEGATEES
OF ADMIRAL LOUIS BRION, DECEASED.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$74,527.50; interest, \$172,922.42.
Claim filed June 19 (Min., p. 25). Oral presentation.
Extension of ten days' time from July 3 for answer by Venezuela (Min., p. 41).
Answer filed July 14 (Min., p. 53).
Claim disallowed August 21 (Min., p. 101).
Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Answer; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 24.

CLAIM OF CHARLES W. TORREY.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$10,000.
Claim filed June 19 (Min., p. 25). Oral presentation. Brief in support.
Extension of ten days' time from July 3 for answer by Venezuela (Min., p. 41).
Answer filed July 14 (Min., p. 53).
Award for \$250 in United States gold on August 25.
Opinion by Paúl, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Decision and award in English; Decision and award in Spanish; Opinion in English; Opinion in Spanish.

No. 25.

CLAIM OF GEORGE E. GAGE.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$12,350.
Claim filed June 19 (Min., p. 27). Oral presentation. Brief in support.

Extension of ten days' time from July 3 for answer by Venezuela (Min., p. 41).

Answer filed July 14 (Min., p. 53).

Commissioners disagreed, and claim was referred to umpire September 4 (Min., p. 111).

Award by umpire for \$100 in United States gold on September 15.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Opinion by Bainbridge, Commissioner, in English; Opinion by Bainbridge, Commissioner, in Spanish; Opinion by Paúl, Commissioner, in English; Opinion by Paúl, Commissioner, in Spanish; Decision and award in English; Decision and award in Spanish; Opinion by umpire in English; Opinion by umpire in Spanish.

No. 26.

CLAIM OF WILLIAM B. MATCHETT.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$100,900.

Claim filed June 19 (Min., p. 27). Oral presentation. Brief in support.

Extension of ten days' time from July 3 for answer by Venezuela (Min., p. 41).

Answer filed July 14 (Min., p. 53).

Claim disallowed September 4.

Opinion by Commission.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 27.

CLAIM OF LORENZO MERCADO.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$160,000.

Claim filed June 19 (Min., p. 27). Oral presentation. Brief in support.

Extension of ten days' time from July 3 for answer by Venezuela (Min., p. 41).

Answer filed July 14 (Min., p. 53).

Claim withdrawn August 18 in accordance with instructions received from United States legation, Caracas (Min., p. 97).

LIST OF DOCUMENTS.

Memorial; Brief; Answer.

No. 28.

CLAIM OF F. SCANDELLA.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$8,000.

Claim filed June 23 (Min., p. 29). Oral presentation. Brief in support.

Extension of ten days' time from July 7 for answer by Venezuela (Min., p. 45).

Answer filed July 17 (Min., p. 57).

Claim disallowed by Commission September 11.

Opinion by Paúl, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 29.

CLAIM OF WILLIAM H. PHELPS.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$400.

Claim filed June 23 (Min., p. 29). Oral presentation. Brief in support.

Extension of ten days' time from July 7 for answer by Venezuela (Min., p. 45).

Answer filed July 17 (Min., p. 57).

Award for \$315.25 in United States gold on August 1.

Opinion by Commission.

LIST OF DOCUMENTS.

Memorial; Answer; Decision and Award in English; Decision and Award in Spanish; Opinion in English; Opinion in Spanish.

No. 30.

CLAIM OF JOSEPH ANDERSON, JR.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$10,769.23; interest, \$18,092.30.

Claim filed June 26 (Min., p. 33). Oral presentation. Brief in support.

Extension of ten days' time from July 10 for answer by Venezuela.

Answer filed July 21 (Min., p. 63).

Claim dismissed without prejudice for want of jurisdiction August 25.

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 31.

CLAIM OF LA GUAYRA CABLE COMPANY.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$286,600.

Claim filed June 26 (Min., p. 33). Oral presentation. Brief in support.

Extension of ten days' time from July 10 for answer by Venezuela (Min., p. 51).

Answer filed July 21 (Min., p. 63).

Claim disallowed by Commission September 8.

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Two original expedientes as part of answer; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 32.

CLAIM OF THOMSON HOUSTON INTERNATIONAL ELECTRIC COMPANY.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$9,427.93.

Claim filed June 26 (Min., p. 33). Oral presentation.

Extension of ten days' time from July 10 for answer by Venezuela (Min., p. 51).

Answer filed July 21 (Min., p. 63).

Extension of ten days' time for replication by United States granted on July 17 (Min., p. 51).

Replication filed July 24 (Min., p. 67).

Claim dismissed without prejudice for want of jurisdiction September 22.

Opinion by Paúl, Commissioner.

LIST OF DOCUMENTS.

Memorial; Answer; Replication; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 33.

CLAIM OF HENRY C. BULLIS.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$50,000.

Claim filed June 26 (Min., p. 33). Oral presentation.

Extension of ten days' time from July 10 for answer by Venezuela (Min., p. 51).

Answer filed July 21 (Min., p. 63).

Extension of ten days' time for replication by United States granted July 17.

Replication filed July 24 (Min., p. 67).

Claim disallowed September 1.

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Answer; Replication; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 34.

CLAIM OF J. B. F. P. MONNOT.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$206,681.12; interest, \$19,176.33.

Claim filed June 26 (Min., p. 33). Oral presentation. Brief in support.

Extension of ten days' time from July 10 for answer by Venezuela (Min., p. 51).

Answer filed July 21 (Min., p. 63).

Award for \$4,692.08 in United States gold on September 22.

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Decision and award in English; Decision and award in Spanish; Opinion in English; Opinion in Spanish.

No. 35.

CLAIM OF J. B. BANCE, RECEIVER IN BANKRUPTCY OF ERNESTRO CAPRILES, FOR THE BENEFIT OF WEEKS, POTTER & CO., SEABURY & JOHNSON, AND JOHNSON & JOHNSON, AMERICAN CITIZENS, CLAIMANTS.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$2,995.38.

Claim filed July 1 (Min., p. 37). Oral presentation. Brief in support.

Extension of ten days' time from July 14 for answer by Venezuela (Min., p. 53).

Answer filed July 26 (Min., p. 69).

Replication filed August 1 (Min., p. 77).

Claim dismissed without prejudice for want of jurisdiction September 22.

Opinion by Paul, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Replication; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 36.

CLAIM OF GEORGE W. UPTON.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$30,220.43.

Claim filed July 1 (Min., p. 39). Oral presentation.

Filed additional papers July 7 (Min., p. 45).

Extension of ten days' time from July 14 for answer by Venezuela (Min., p. 53).

Answer filed July 26 (Min., p. 69).

Extension of time for replication by United States until August 5 granted August 1 (Min., p. 77).

Further extension to August 8 granted August 4 (Min., p. 87).

Further extension to August 11 granted August 7 (Min., p. 89).

Replication filed "with secretaries" August 14 (Min., p. 95).

Additional evidence filed with replication (Min., p. 93).

Award for \$5,376.25 in United States gold on September 25.

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Supplemental proofs; Answer; Replication and new proofs; Decision and award in English; Decision and award in Spanish; Opinion in English; Opinion in Spanish.

No. 37.

CLAIMS OF MAURICIO BERRIZBETIA.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$2,230.77.

Claim filed July 1 (Min., p. 39). Oral presentation.

Extension of ten days' time from July 14 for answer by Venezuela (Min., p. 53).

Answer filed July 26 (Min., p. 69).

Replication filed August 1 (Min., p. 77).

Withdrawn August 25 (Min., p. 105).

LIST OF DOCUMENTS.

Memorial; Copy of certificate of baptism; Answer; Replication.

No. 38.

CLAIM OF VIRGILIO DEL GENOVESE.

SUMMARY OF PROCEEDINGS.

Amount claimed: Claim No. 1, \$79,219.73; claim No. 2, \$50,432.69; claim No. 3, \$525.

Claims filed July 1 (Min., p. 39). Oral presentation. Brief in support.

Extension of ten days' time from July 14 for answer by Venezuela (Min., p. 53).

Answer filed July 26 (Min., p. 69).

Award for \$70,083.28 in United States gold on October 2.

Opinion by Paúl, Commissioner.

LIST OF DOCUMENTS.

Memorial; Brief; Answer; Decision and award in English; Decision and award in Spanish; Opinion in English; Opinion in Spanish.

No. 39.

CLAIM OF LA GUAYRA ELECTRIC LIGHT AND POWER COMPANY.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$1,502,659.61.

Claim filed July 1 (Min., p. 39). Oral presentation.

Extension of ten days' time from July 14 for answer by Venezuela (Min., p. 53).

Answer filed July 26 (Min., p. 69).

Extension of time for replication until August 5, granted August 1 (Min., p. 77).

Further extension to August 6, granted August 4 (Min., p. 87).

Further extension to August 14, granted August 7 (Min., p. 89).

Replication filed August 14 with additional evidence (Min., p. 95).

Award for \$2,659.61 in United States gold on October 2 for one item. The remaining items dismissed without prejudice for want of jurisdiction.

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial; Answer; Replication and new proofs; Decision and award in English; Decision and award in Spanish; Opinion in English.

No. 40.

CLAIM OF HENRY T. DUKE.

SUMMARY OF PROCEEDINGS.

Amount claimed: Claim No. 1, \$7,926.92; claim No. 2, \$2,800; claim No. 3, \$3,000; total interest, \$1,199.60.

Claims filed July 1 (Min., p. 53). Oral presentation.

Answer filed July 26 (Min., p. 69).

Extension of time for replication by United States until August 5, granted August 1 (Min., p. 77).

Further extension until August 6, granted August 4 (Min., p. 87).

Replication filed August 7 (Min., p. 89).

Claim disallowed October 2.

Opinion by Paúl, Commissioner.

LIST OF DOCUMENTS.

Memorial; Answer; Replication; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 41.

CLAIM OF SOFIA IDA WISKOW DE RUDLOFF AND FREDERICK W. RUDLOFF.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$613,423.27.

Claim filed July 1. Oral presentation.

Extension of ten days' time from July 14 for answer by Venezuela (Min., p. 53).

Further extension until August 1, granted July 20 (Min., p. 71).

Answer filed August 1 (Min., p. 77).

Replication filed August 7 (Min., p. 89).

Commissioners disagreed on question of jurisdiction and referred the matter to the umpire, in written opinion, for interlocutory decision, October 13 (Min., p. 139).

Umpire filed interlocutory decision, holding that Commission possesses jurisdiction, October 24 (Min., p. 153).

Award by Commission for \$75,745 in United States gold on November 4.

Opinion by Bainbridge, Commissioner.

Opinion by Grisanti, Commissioner.

LIST OF DOCUMENTS.

Memorial; Original memorial in Spanish; Original documents B, D, G; Demurrer; Answer; Official Gazettes Nos. 8772, 8773, 8775, and 8776; Replication; Opinion on jurisdiction by Bainbridge, in English; Opinion on jurisdiction by Bainbridge, in Spanish; Opinion on jurisdiction by Doctor Paúl, in English; Opinion on jurisdiction by Doctor Paúl, in Spanish; Interlocutory decision by umpire, in English; Interlocutory decision by umpire, in Spanish; Opinion by umpire on jurisdiction, in English; Opinion by umpire on jurisdiction, in Spanish; Decision and award, in English; Decision and award, in Spanish; Opinion by Bainbridge, Commissioner, in English; Opinion, by Grisanti, Commissioner, in English.

No. 42.

CLAIM OF GEORGE GROWTHER.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$3,000; interest, \$138.75; second claim undetermined.

Claim filed with the secretaries July 3 (Min., pp. 41 and 51).

Oral presentation July 10. Brief in support (Min., p. 51).

Extension of fifteen days' time from July 10 for answer by Venezuela.

Answer filed July 26 (Min., p. 71).

Award for \$3,138.75 in United States gold on October 13.

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Original memorial in Spanish; Translated memorial; Translated proofs; Brief; Answer; Decision and award in English; Decision and award in Spanish; Opinion in English; Opinion in Spanish.

No. 43.

CLAIM OF GEORGE W. UPTON (No. 2).

SUMMARY OF PROCEEDINGS.

Amount claimed, \$100,000.

Extension obtained on July 1 to present claim on July 7 (Min., p. 37).

Claim filed July 7 (Min., p. 45). Oral presentation.

Extension of ten days' time from July 21 for answer by Venezuela (Min., p. 65).

Answer filed August 1 (Min., p. 77).

Replication filed August 11 (Min., p. 93).

Claim disallowed September 29.

Opinion by Paúl, Commissioner.

LIST OF DOCUMENTS.

Memorial; Answer; Replication; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 44.

CLAIM OF PEDRO MIGUEL PAREZ.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$54,950.

Extension obtained on July 1 to present claim on July 21 (Min., p. 37).

Claim filed July 14. Oral presentation.

Extension of ten days' time from July 28 for answer by Venezuela (Min., p. 73).

Answer filed August 7 (Min., p. 89).

Claim dismissed without prejudice for want of jurisdiction on October 13.

Opinion by Commission.

LIST OF DOCUMENTS.

Memorial; Two original documents and one passport; Answer; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 45.

CLAIM OF GEORGE TURNBULL

SUMMARY OF PROCEEDINGS.

Amount claimed, \$1,622,030.

Extension obtained on June 19 to present claim on July 17 (Min., p. 25).

Claim filed July 17 (Min., p. 57). Oral presentation.

Extension of fifteen days' time from August 1 for answer by Venezuela (Min., p. 79).

Answer filed August 17 (Min., p. 97).

Extension of time to complete answer until August 25 requested at session of August 17 (Min., p. 99).

Further answer filed August 25 (Min., p. 105).

Answer of Venezuela joined this claim and claims Nos. 46 and 47, and the three claims were considered together by the Commission.

Commissioners disagreed.

Bainbridge, Commissioner, filed written opinion on these three claims on December 26.

Grisanti, Commissioner, reserved his right to file his opinion any time prior to January 17, 1904, this being the last day of the six months' period provided by the protocol from the date of the first formal presentation of these claims.

Opinion by Grisanti, Commissioner, filed.

This claim and claims No. 46 and 47 referred to the umpire on December 26.

Claim disallowed by umpire April 12, 1904.

LIST OF DOCUMENTS.

Memorial; one original copy of Gaceta Oficial, No. —; one original copy of Gaceta Oficial, No. 4290, March 14, 1888; one original copy of Gaceta Oficial, No. 4989, July 8, 1890; one original copy of Gaceta Oficial, No. 6433, June 19, 1895; one original copy of Gaceta Oficial, No. 6877, November 28, 1896; Answer; A proroga granted to Fitzgerald, renunciation of Turnbull on contract; Pamphlet, Turnbull informe; Completion of answer filed by Venezuela; 11 original expedientes and documents filed as evidence by agent of Venezuela jointly for claims 45, 46, and 47, as follows: Document No. 1, Fitzgerald Manoa Co. Expediente; Document A, Memorandum on Manoa office; Document No. 2, Turnbull contract documents; Document 3, Re Pedernales mine; Document B, Memorandum concerning Manoa matter and judgment of high federal court in favor of George Turnbull; Document 7, Re Pedernales and land concessions to Turnbull; Document 9, Re Pedernales asphalt mine; Document 11, Re cession of public lands to George Turnbull; Document 13, Re petitions of Turnbull about Imatace and bankruptcy of Manoa Company; Document C, Documents forwarded by Jefe Civil of Dallo Casta re Orinoco Company (Limited); Document D, Documents re same matter; Opinion by Bainbridge, Commissioner; Opinion by Grisanti, Commissioner.

No. 46.

CLAIM OF THE MANOA COMPANY (LIMITED).

SUMMARY OF PROCEEDINGS.

Amount claimed, \$2,302,000.

Extension obtained on June 16 to present claim on August 1 (Min., p. 21).

Claim filed July 17 (Min., p. 59). Oral presentation.

Extension of fifteen days' time from August 1 for answer by Venezuela (Min., p. 79).

Answer filed August 17 (Min., p. 97).

Extension of time to complete answer until August 25 requested at session of August 17 (Min., p. 99).

Further answer filed August 25 (Min., p. 105).

Rebuttal evidence filed by United States agent September 1 (Min., p. 107).

Agent of United States called attention to the absence of expedientes Nos. 5 and 12, important documents in this case, and suggested that the Commission call for them when about to decide claim, September 11 (Min., p. 109).

Expedientes Nos. 5 and 12 requested by Commission September 11 (Min., p. 117).

Expedientes Nos. 5 and 12 produced September 15 (Min., p. 119).

New evidence presented by United States legation, admitted September 22 (Min., p. 129).

Item of claim concerning loss of steamship *Faribault* withdrawn October 16 (Min., p. 143).

The same action by Commission in this claim as in claim No. 45.

Claim disallowed by umpire April 12, 1904.

LIST OF DOCUMENTS.

Memorial; Answer; Completion of answer filed by agent of Venezuela; 11 original expedientes from minutes of fomento filed as evidence in answer jointly for claims 47 and 46 and 45 (see p. 45 for specification); Rebuttal evidence filed in this case jointly with claim No. 47 (see claim No. 47 for specification of documents); Expedientes Nos. 5 and 12 filed by agent of Venezuela; Additional evidence filed through United States legation; Opinion by Bainbridge, Commissioner. Opinion joins this claim (No. 46) with claims No. 45 and 47; Opinion by Grisanti, Commissioner; Opinion by umpire.

No. 47.

CLAIM OF THE ORINOCO COMPANY (LIMITED).

SUMMARY OF PROCEEDINGS.

Amount claimed, \$1,230,000.

Extension obtained on June 16 to present claim on August 1 (Min., p. 21).

Claim filed July 17 (Min., p. 59). Oral presentation.

Extension of fifteen days' time from August 1 for answer by Venezuela (Min., p. 79).

Answer filed August 17 (Min., p. 97).

Extension of time to complete answer until August 25 requested at session of August 17 (Min., p. 99).

Further answer filed August 25 (Min., p. 105).

Rebuttal evidence filed by United States agent September 1 (Min., p. 107).

Agent of United States called attention to the absence of expedientes Nos. 5 and 12, important documents in the case, and suggested that the

Commission call for them when about to decide claim, September 1 (Min., p. 109).

Expedientes Nos. 5 and 12 requested by Commission September 11 (Min., p. 117).

Expedientes Nos. 5 and 12 produced September 15 (Min., p. 119).

The same action by the Commission in this claim as in claim No. 45. Award by umpire for \$26,620 in United States gold, April 12, 1904.

LIST OF DOCUMENTS.

Memorial; Answer; Completion of answer filed by agent of Venezuela; 11 documents filed by agent of Venezuela in connection with answer to claim (jointly for claims 45, 46, and 47); Rebuttal evidence filed by agent for the United States jointly referring to claims 46 and 47 as follows: A, Deposition of George N. Baxter; B, Memorandum of documents filed; C, Resolution of February 26, 1886; D, Pay-roll book and three extra pay sheets of the Manoa Company (Limited); E, Cash book of the Manoa Company (Limited); F, Journal of the Manoa Company (Limited); G, Abstract of title of Manoa Company (Limited) and successors (requested to be returned when Commission ends its labors); H, Opinions of Dr. Anibal Dominici and others; I, Correspondence of George N. Baxter and memorials of George Turnbull to State Department; J, Protest of January 4, 1896; K, Sundry certificates, petitions, and notices showing interferences; L, Two maps and one plan, etc.; M, Contract of Orinoco Company (Limited); N, Annual reports of Orinoco Company; O, Letters to General Andrade and General Castro; Q, Official Gazette No. 7958 and translation of decision; R, Official Gazettes Nos. 7989, 8214, and 8240; S, Deposition of Charles B. Duffy; T, Deposition of James E. York; V, Deposition of Robert Henderson; W, Supplement to memorial with 20 Official Gazettes therein specified.

No. 48.

CLAIM OF WILLIAM H. MUNDY.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$10,000.

Extension obtained on July 1 to present claim on July 21 (Min., p. 37).

Claim filed July 17 (Min., p. 59). Oral presentation.

Extension of ten days' time from August 1 for answer by Venezuela (Min., p. 79).

Answer filed August 7 (Min., p. 89).

Replication filed with secretaries August 14.

Claim disallowed on October 16.

Opinion by Commission.

Application to present new evidence made by claimant direct and also by agent of the United States on behalf of claimant December 12. Agent of Venezuela objected to new proof being filed December 26 and on same day Commission denied application.

LIST OF DOCUMENTS.

Memorial; Answer; Replication; Decision in English; Decision in Spanish.

No. 49.

CLAIM OF THE AMERICAN ELECTRIC AND MANUFACTURING COMPANY.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$384,142.51.

Extension obtained on July 1 to present claim on July 21 (Min., p. 37).

Claim filed July 21 (Min., p. 63). Oral presentation.

Extension of ten days' time from August 4 for answer by Venezuela (Min., p. 87).

Answer filed August 16 (Min., p. 97).

Extension obtained on August 21 to reply, until August 28 (Min., p. 101).

Replication filed August 26 (Min., p. 107).

Evidence referred to in Replication filed September 1 by agent of Venezuela (Min., p. 109).

Written opinion by Grisanti, Commissioner, disallowing claim.

Bainbridge, Commissioner, verbally disagreed and the matter was referred to the umpire on October 31 (Min., p. 155).

Claim disallowed by umpire November 18.

LIST OF DOCUMENTS.

Memorial; Answer; Replication and translation of proof; Opinion by Doctor Grisanti, Commissioner, in English; Opinion by Doctor Grisanti, Commissioner, in Spanish; Decision by umpire in English; Decision by umpire in Spanish; Opinion by umpire in English; Opinion by umpire in Spanish.

No. 50.

CLAIM OF LORENZO MERCADO.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$304,198.96.

Extension obtained on July 1 to present claim on July 21 (Min., p. 37).

Claim filed July 21 (Min., p. 71). Oral presentation.

Extension of ten days' time from August 4 for answer by Venezuela (Min., p. 87).

Answer filed August 11 (Min., p. 93).

Claim withdrawn August 18 in accordance with instructions received from United States legation, Caracas (Min., p. 97).

LIST OF DOCUMENTS.

Memorial; Proofs (two original documents in Spanish); Answer.

No. 51.

CLAIM OF THE HEIRS OF CHARLES RAYMOND.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$78,520.

Extension obtained on July 1 to present claim on July 28 (Min., p. 37).

Claim filed July 28 (Min., p. 37). Oral presentation.

Extension of ten days' time from August 4 for answer by Venezuela (Min., p. 87).

Answer filed August 11 (Min. p. 93).

Replication filed August 18 (Min., p. 97).

Claim disallowed November 11.

Separate opinions by Grisanti and Bainbridge, Commissioners.

LIST OF DOCUMENTS.

Memorial; Answer; Replication and new evidence; Decision in English; Decision in Spanish; Opinion by Bainbridge, Commissioner, in English; Opinion by Bainbridge, Commissioner, in Spanish; Opinion by Grisanti, Commissioner, in English; Opinion by Grisanti, Commissioner, in Spanish.

No. 52.

CLAIM OF W. H. VOLKMAR.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$16,184.60; interest, \$5,332.40.

Claim filed July 28, permission to file having been granted by the Commission (Min., p. 71).

Oral argument to Commission.

Extension of ten days' time from August 4 for answer by Venezuela.

Answer filed August 16 (Min., p. 97).

Replication filed August 21 (Min. p. 101).

Claim disallowed October 31.

Opinion by Bainbridge, Commissioner.

LIST OF DOCUMENTS.

Memorial and proofs; Answer; Replication; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 53.

CLAIM OF FLANNAGAN, BRADLEY, CLARK & COMPANY.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$175,800; interest, \$676,385.50.

Claim filed August 4, permission to file having been granted by Commission (Min., p. 87). Oral argument to Commission.

Extension to answer until September 1 granted August 25 (Min., p. 103).

Answer filed September 1 (Min., p. 109).

Replication filed September 2.

Claim disallowed September 18.

Opinion by Commission.

LIST OF DOCUMENTS.

Memorial; Answer; Replication; Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

No. 54.

CLAIM OF ELIAS A. DE LIMA, ELIAS S. A. DE LIMA, EDWARD DE LIMA, PARTNERS AS D. A. DE LIMA & CO.

SUMMARY OF PROCEEDINGS.

Amount claimed, \$70,000; interest, \$10,150.

Claim filed September 1 (Min., p. 109). Oral presentation. Brief in support.

Filed with understanding that depositions now being taken at Coro should be presented to court before September 30, so that time for answer of Venezuela should run from presentation of depositions.

Claim withdrawn October 13 (Min., p. 141).

LIST OF DOCUMENTS.

Memorial; Brief.

No. 55.

CLAIM OF J. B. F. P. MONNOT. (No. 2.)

SUMMARY OF PROCEEDINGS.

Amount claimed, \$637,000.

Claim filed September 18 (Min., p. 119).

Objection raised to filing by Commissioner on part of Venezuela. Commissioner on part of United States favored filing. Decision by umpire permitted the claim to be filed on September 18.

Answer filed November 28 nunc pro tunc as of October 7 (Min., p. 165).

Claim disallowed.

Opinion by Commission.

LIST OF DOCUMENTS.

Letter from claimant to United States legation; Letter from United States legation presenting claim; Letter from United States agent to claimant's representative; Memorial and proofs; Answer (nunc pro tunc as of October 7 entered on minutes of November 28). Decision in English; Decision in Spanish; Opinion in English; Opinion in Spanish.

There are annexed hereto as part of this report copies of all the pleadings before the Commission, together with copies of all the decisions and awards of the Commissioners and of the umpire.

In conclusion I desire to tender my most sincere thanks to yourself and to all the officials and employees of the Department of State for the cordial assistance given me in the prosecution of the work before the Commission. I also wish to express my appreciation of the assistance rendered me by Hon. Herbert W. Bowen, envoy extraordinary and minister plenipotentiary of the United States to Venezuela, during his presence at Caracas, and also of the aid extended me by Hon. W. W. Russell, chargé d'affaires ad interim of the United States at Caracas, after Mr. Bowen's departure on his mission before The Hague tribunal.

I have the honor to be,

Very respectfully, your obedient servant,

ROBERT C. MORRIS,

*Agent of the United States before the United States
and Venezuelan Claims Commission.*

NEW YORK CITY, *May 5, 1904.*

VENEZUELA—CLAIMS.

PROTOCOL OF AN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF VENEZUELA FOR SUBMISSION TO ARBITRATION OF ALL UNSETTLED CLAIMS AGAINST VENEZUELA.

Signed at Washington, February 17, 1903.

Protocol of an Agreement between the Secretary of State of the United States of America and the Plenipotentiary of the Republic of Venezuela for submission to arbitration of all unsettled claims of citizens of the United States of America against the Republic of Venezuela.

Protócolo de un Convenio entre el Secretario de Estado de los Estados Unidos de América y el Plenipotenciario de la República de Venezuela para la sumisión á arbitraje de todas las reclamaciones pendientes de ciudadanos de los Estados Unidos de América contra la República de Venezuela.

The United States of America and the Republic of Venezuela, through their representatives, John Hay, Secretary of State of the United States of America, and Herbert W. Bowen, the Plenipotentiary of the Republic of Venezuela, have agreed upon and signed the following protocol.

Los Estados Unidos de América y la República de Venezuela, por medio de sus representantes, John Hay, Secretario de Estado de los Estados Unidos de América, y Herbert W. Bowen, Plenipotenciario de la República de Venezuela, han convenido en el siguiente protócolo, que han firmado.

ARTICLE I.

All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission hereinafter named by the Department of State of the United States or its Legation at Caracas, shall be examined and decided by a mixed commission, which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by the President of the United States and the other by the President of Venezuela.

ARTÍCULO I.

Todas las reclamaciones poseídas por ciudadanos de los Estados Unidos de América contra la República de Venezuela, que no hayan sido arregladas por la vía diplomática ó por arbitraje entre los dos Gobiernos, y que hubieren sido presentadas por el Departamento de Estado de los Estados Unidos ó por su Legación en Caracas á la Comisión abajo mencionada, serán examinadas y decididas por una Comisión Mixta, que celebrará sus sesiones en Caracas, y que se compondrá de dos miembros, uno de los cuales será nombrado por el Presidente de los Estados Unidos, y el otro por el Presidente de Venezuela.

It is agreed that an umpire may be named by the Queen of the Netherlands. If either of said commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said commissioners and umpire are to be appointed before the first day of May, 1903.

The commissioners and the umpire shall meet in the city of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations, and shall be competent to decide any question on which the commissioners disagree. Before assuming the functions of their office the commissioners and the umpire shall take solemn oath carefully to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings. The commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature, or of the provisions of local legislation.

The decisions of the commission, and in the event of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be made payable in United States gold, or its equivalent in silver.

ARTICLE II.

The commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only

Se conviene en que un tercero en discordia podrá ser nombrado por la Reina de los Países Bajos. Si uno de dichos comisionados ó el tercero en discordia dejare de ejercer sus funciones, será nombrado en el acto su sucesor del mismo modo que el antecesor de éste. Dichos comisionados y tercero en discordia deben ser nombrados antes del día primero de mayo de 1903.

Los comisionados y el tercero en discordia se reunirán en la ciudad de Caracas el día primero de junio de 1903. El tercero en discordia presidirá sus deliberaciones, y tendrá facultad para dirimir cualquier cuestión sobre la que no puedan avenirse los comisionados. Antes de empezar á ejercer las funciones de su cargo, los comisionados y el tercero en discordia prestarán solemnemente juramento de examinar con cuidado, y de decidir imparcialmente, con arreglo á la justicia y á las estipulaciones de esta convención, todas las reclamaciones que se les sometieren, y tales juramentos se asentarán en su libro de actas. Los comisionados, ó en caso de que éstos no puedan avenirse, el tercero en discordia decidirá todas las reclamaciones con arreglo absoluto á la equidad, sin reparar en objeciones técnicas, ni en las disposiciones de la legislación local.

Las decisiones de la comisión, y en caso de su desavenencia, las del tercero en discordia, serán definitivas y concluyentes. Se entenderán por escrito. Todas las cantidades falladas serán pagaderas en moneda de oro de los Estados Unidos ó en su equivalente en plata.

ARTÍCULO II.

Los comisionados ó el tercero en discordia, según el caso, investigarán y decidirán tales reclamaciones con arreglo únicamente á .

as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim, and to hear oral or written arguments made by the Agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim, the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the day of their first meeting, unless the commissioners or the umpire in any case extend the period for presenting the claim not exceeding three months longer. The commissioners shall be bound to examine and decide upon every claim within six months from the day of its first formal presentation, and in case of their disagreement, the umpire shall examine and decide within a corresponding period from the date of such disagreement.

ARTICLE III.

The commissioners and the umpire shall keep an accurate record of their proceedings. For that purpose, each commissioner shall appoint a secretary versed in the language of both countries, to assist them in the transaction of the business of the commission. Except as herein stipulated, all questions of procedure shall be left to the determination of the commission, or in case of their disagreement, to the umpire.

las pruebas ó informes suministrados por los respectivos Gobiernos, ó en nombre de éstos. Tendrán obligación de recibir y considerar todos los documentos ó exposiciones escritas que les fueren presentadas por los respectivos Gobiernos, ó en su nombre, en apoyo ó en refutación de cualquiera reclamación, y de oír los argumentos orales ó escritos que hiciere el agente de cada Gobierno sobre cada reclamación. En caso de que dejen de avenirse sus opiniones sobre cualquiera reclamación, decidirá el tercero en discordia.

Cada reclamación se presentará formalmente á los comisionados dentro de treinta días contados desde la fecha de su primera reunión, á menos que los comisionados ó el tercero en discordia prorroguen, en algún caso, por un término que no exceda de tres meses, el período concedido para presentar la reclamación. Los comisionados tendrán obligación de examinar y decidir todas las reclamaciones dentro de seis meses contados desde el día en que hubieren sido formalmente presentadas por primera vez, y en caso de su desavenencia, examinará y decidirá el tercero en discordia dentro de un período correspondiente contado desde la fecha de tal desavenencia.

ARTÍCULO III.

Los comisionados y el tercero en discordia llevarán un registro exacto de todas sus deliberaciones y acuerdos. Para ese objeto, cada comisionado nombrará un secretario versado en el idioma de cada país para que le ayude en el despacho de los negocios que pendieren ante la comisión. Salvo las estipulaciones del presente protocolo, toda cuestión de procedimiento se remitirá á la resolución de la comisión, ó en caso de su desavenencia, á la del tercero en discordia.

ARTICLE IV.

Reasonable compensation to the commissioners and to the umpire for their services and expenses, and the other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

ARTÍCULO IV.

Una retribución equitativa será pagada por las partes contratantes, en partes iguales, á los comisionados y al tercero en discordia por sus servicios y gastos, y también se satisfarán de la misma manera, los demás gastos del arbitraje.

ARTICLE V.

In order to pay the total amount of the claims to be adjudicated as aforesaid, and other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose, and alienate to no other purpose, beginning with the month of March, 1903, thirty per cent. in monthly payments of the customs revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of the Hague Tribunal.

In case of the failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports, and shall administer them until the liabilities of the Venezuelan Government in respect to the above claims shall have been discharged. The reference of the question above stated to the Hague Tribunal will be the subject of a separate protocol.

ARTÍCULO V.

Con el fin de pagar el importe total de las reclamaciones que se hayan de decidir de la manera que queda dicha, y otras reclamaciones de ciudadanos ó súbditos de otros Estados, el Gobierno de Venezuela reservará, y no enajenará para ningún otro objeto (empezando desde el mes de marzo de 1903) un treinta por ciento, en pagos mensuales, de las rentas aduanales de la Guaira y Puerto Cabello, y el dinero así reservado será distribuido con arreglo al fallo del Tribunal de la Haya.

En caso de que no se cumpla el susodicho convenio, empleados belgas quedarán encargados del cobro de los derechos de aduana de ambos puertos, y los administrarán hasta que se hayan cumplido las obligaciones del Gobierno de Venezuela respecto de las referidas reclamaciones. La remisión al Tribunal de la Haya de la cuestión arriba expuesta será objeto de un protocolo separado.

ARTICLE VI.

All existing and unsatisfied awards in favor of citizens of the United States shall be promptly paid, according to the terms of the respective awards.

ARTÍCULO VI.

Todas las sumas falladas á favor de ciudadanos de los Estados Unidos que no se hayan satisfecho, serán pagadas con puntualidad, conforme á las disposiciones de los respectivos fallos.

Washington, D. C., February 17, 1903.

JOHN HAY
HERBERT W. BOWEN. [SEAL]

RULES OF THE COMMISSION.

I.

The secretaries shall keep a docket and enter thereon a list of all claims as soon as they shall be formally filed with the Commission. They shall indorse the date of filing upon each paper presented to the Commission and enter a minute thereof in the docket. The claims shall be numbered consecutively beginning with the claim first presented as No. 1.

The caption of each case shall be:

THE UNITED STATES OF AMERICA ON BEHALF of ———, claimant. v. THE REPUBLIC OF VENEZUELA.	}	No. ———.
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The secretaries shall keep duplicate records of the proceedings had before the Commission and of the docket of claims filed with the Commission, both in English and Spanish, so that one copy each shall be supplied to each government.

II.

All claims must be formally presented to the Commission within thirty days from the first day of June, 1903, unless the Commissioners or the umpire grant a further extension in accordance with the provisions of paragraph 2 of Article II of the protocol.

III.

A claim shall be deemed to be formally filed with the Commission upon the presentation of the written documents or statements in connection therewith to the secretaries of the Commission by the agent of the United States.

IV.

The Government of the United States by its agent shall have the right to file with each claim at the time of presentation a brief in support thereof.

It shall not be necessary for the Republic of Venezuela in any case to deny the allegations of the claim or the validity thereof; but a general denial shall be entered of record by the secretaries, as of course, and thereby all the material allegations of the petition shall be considered as put in issue.

The Republic of Venezuela, however, by its agent, shall have the right to make specific answer to each claim within fifteen days after the date of filing thereof, and, if it elects to answer, it shall, at or before the time of making said answer by its agent, present to the Commission all evidence which it intends to produce in opposition to the claim. The Government of the United States, by its agent, shall have the right to present evidence in rebuttal within the period in this rule provided for the filing of a replication.

The filing of a brief on behalf of the claimant Government and the filing of a brief on behalf of the respondent Government or the failure

to specifically answer any claim within the time allowed, as above provided, shall be deemed to close the proceedings before the Commission in regard to the claim in question, unless the agent of the United States within two days from the filing of a brief by the respondent Government shall formally request of the Commission, in writing, a further period of five days in which to file a replication; in which event the Republic of Venezuela shall, upon the like request of its agent, have a like period within which to put in a rejoinder, which replication and rejoinder shall finally close the proceedings.

V.

The petition or answer may be amended at any time before the final submission of any claim, as provided in the preceding rules, upon leave granted by the Commission.

VI.

No documents or statements or written or oral argument will be received except such as shall be furnished by or through the agents of the respective Governments.

VII.

The secretaries shall each keep a record of the proceedings of the Commission for each day of its session in both English and Spanish, in books provided for the purpose, which shall be read at its next meeting, and if no objection be made, or when corrected, if correction be needed, shall be approved and subscribed by the umpire and Commissioners and countersubscribed by the secretaries.

They shall keep a notice book in which entries may be made by the agent for either Government, and when made shall be notice to the opposing agent and all concerned.

They shall provide duplicate books of printed forms under the direction of the Commission, in which shall be recorded its several awards or decisions signed by the Commissioners, or, in case of their disagreement, by the umpire, and verified by the secretaries.

They shall be the custodians of the papers, documents, and books of the Commission under its direction, and shall keep the same safe and in methodical order. While affording every reasonable opportunity and facility to the agents of the respective Governments to inspect and make extracts from papers and records, they shall permit none to be withdrawn from the files of the Commission, except by its direction duly entered of record.

VIII.

When an original paper on file in the archives of either Government can not be conveniently withdrawn, a duly certified copy may be received in evidence in lieu thereof.

REGLAMENTO.

I.

Los Secretarios llevarán un registro y asentarán en él una lista de todas las reclamaciones luego que hayan sido formalmente presentadas á la Comisión. En cada papel presentado á la Comisión, anotarán la fecha de su presentación y asentarán una minuta de él en el registro. Las reclamaciones se numerarán consecutivamente, empezando por la primera que se presente, que será la Número 1.

El encabezamiento de cada reclamación será:

LOS ESTADOS UNIDOS DE AMÉRICA EN FAVOR	} No. —.
de ———, Reclamante,	
<i>vs.</i>	
LA REPÚBLICA DE VENEZUELA.	

Los secretarios llevarán registros duplicados de las actuaciones de la Comisión y de la lista de las reclamaciones presentadas á la Comisión en inglés y castellano, de modo que á cada Gobierno se le dé un ejemplar.

II.

Todas las reclamaciones deberán presentarse formalmente á la Comisión, dentro de treinta días contados desde el 1° de Junio de 1903, á no ser que los Comisarios ó el tercero en discordia concedan una prórroga, con arreglo á lo estipulado en el parágrafo 2, Artículo II del Protocolo.

III.

Se juzgará formalmente presentada á la Comisión, una reclamación, desde el momento de la presentación de los documentos ó exposiciones por escrito conexas con ella á los secretarios de la Comisión por el agente de los Estados Unidos.

IV.

El Gobierno de los Estados Unidos tendrá el derecho de presentar por medio de su agente con cada reclamación, al tiempo de su presentación, un informe en apoyo de ella.

En ningún caso será necesario que la República de Venezuela contradiga las alegaciones de las reclamaciones ó la validez de ellas, sino que los secretarios registraren de oficio, como es debido, una contradicción en términos generales, y con esto se considerarán contradichas todas las alegaciones materiales de la petición.

No obstante, la República de Venezuela tendrá el derecho de contestar específicamente, por medio de su agente, á cada reclamación dentro de quince días después de la fecha de su presentación; y si ella opta por contestar, presentará á la Comisión, antes ó al tiempo de la dicha contestación, por medio de su agente, todas las pruebas que se proponga producir en oposición á la reclamación. El Gobierno de los Estados Unidos tendrá el derecho de presentar, por medio de su agente, pruebas en refutación, dentro del período previsto en esta regla, para la presentación de una réplica.

La presentación de un informe sumario en favor del Gobierno reclamante, y la presentación de un informe sumario en favor del Gobierno demandado, á la falta de contestación específica á cualquier reclamación, dentro del término concedido, según queda previsto, se reputará como clausura del procedimiento ante la Comisión, con respecto á la reclamación de que se trate, á menos que el agente de los Estados Unidos, dentro de dos días contados desde la presentación de un informe sumario por el Gobierno demandado, pida formalmente á la Comisión, por escrito, un nuevo término de cinco días, para presentar una réplica dentro de él, caso en el cual la República de Venezuela tendrá un término igual, á igual solicitud de su agente, para presentar una contra-réplica, réplica y contra-réplica que terminarán definitivamente el procedimiento.

V.

Toda petición ó contestación podrá ser modificada en cualquier tiempo antes de ser definitivamente sometido cualquier reclamo, según queda dispuesto en los artículos anteriores, y previo permiso concedido por la Comisión.

VI.

No se recibirán documentosió exposiciones ó argumentos escritos ú orales, sino los que se presenten por los agentes de los respectivos Gobiernos, ó por medio de ellos.

VII.

Cada secretario llevará un registro de las actuaciones de la Comisión, con la minuta de cada sesión, en inglés y en castellano, en libros apropiados para ese fin, los cuales serán leídos en la próxima reunión, y si no se hiciera observación alguna, ó una vez corregidos, cuando fuere necesario, serán aprobados y firmados por el tercero en discordia y los Comisarios, y refrendados por los secretarios.

Llevarán un libro de notificaciones, en el cual podrá hacer asientos el agente de uno ú otro Gobierno, asientos que, al ser hechos, se considerarán como notificaciones al agente opositor y demás interesados.

Llevarán dos libros de esqueletos impresos, bajo la dirección de la Comisión, en los cuales se asentarán los diversos fallos ó decisiones de la Comisión, firmados por los Comisarios, ó en caso de un desacuerdo, por el tercero en discordia, y refrendados por los secretarios. Custodiarán los papeles, documentos y libros de la Comisión, bajo la dirección de ésta, y los guardarán en lugar seguro y con orden metódico. crindarán á los agentes de los respectivos Gobiernos, todas las oportunidades y facilidades racionales, para examinar los papeles y registros y hacer extractos de ellos; pero no permitirán que se extraiga nada de los archivos de la Comisión, sin orden de ésta, debidamente registrada.

VIII.

Cuando un documento existente en los archivos de uno ú otro Gobierno no pueda obtenerse original convenientemente, podrá aceptarse como prueba, en lugar de él, una copia debidamente certificada.

**ADDRESS OF ROBERT C. MORRIS, AGENT OF THE UNITED STATES,
BEFORE THE UNITED STATES AND VENEZUELAN MIXED COM-
MISSION AT THE SESSION OF JUNE 4, 1903.**

To the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

YOUR HONORS: We are met here to-day for the arbitration of certain claims of citizens of the United States against the Republic of Venezuela. The proceeding, therefore, is one of great dignity and importance. It is a transaction eminently American. The South American Republics and the United States have many grounds of mutual affection and esteem, but none more significant than their adhesion to the principle of arbitration. It is a way that we have always taken to settle any differences which may have temporarily arisen to ruffle our uniformly harmonious and neighborly relations. The Republic of Venezuela, especially, has always been a champion of this essentially American way of doing things. And this proceeding is arbitration of a particularly friendly and informal kind. This Commission will not have to decide any new or grand principle of international law. It will simply endeavor to administer justice. As I see it, this is a meeting of high-minded gentlemen—an international court of honor, if you will—who are more interested in facts than in argument, and who will be guided more by sober conviction than by legal abstractions. The protocol itself contemplates this. It prescribes, in so many words, that all claims shall be decided “upon a basis of absolute equity, without regard to objections of a technical nature, or of the provisions of local legislation.” There will, therefore, be no vain quibblings. There will simply be an endeavor to ascertain whether the claims which I shall present have an adequate basis in fact and in justice. I think your honorable body is to be congratulated that its work is thus made simple and informal. I think that the two Governments are to be congratulated in that they are able to come together upon the basis of this most excellent protocol.

The present Commission is the result of much negotiation which terminated in the protocol signed in Washington the 17th day of February last. Many of the claims which I shall present are of long standing. Indeed, some of the claimants or their representatives have been compelled to wait a lifetime for justice. This is not said in any spirit of criticism, or to lay blame for it upon either country. The claimants are rather, as I see it, the victims of unfortunate circumstances, for which each Government must bear its just share of responsibility.

Prior to 1866 many claims were presented by citizens of the United States to the Government at Washington for prosecution against Venezuela. The United States satisfied itself of the justice of some forty-nine of these claims, aggregating nearly five millions of dollars. The two countries entered into negotiations which terminated in a convention, signed in 1866, creating a mixed claims commission. This commission was organized similarly to the present Commission. One Commissioner was appointed by the United States, another Commissioner by the Republic of Venezuela, and the third by the Russian minister at Washington. This commission met here in Caracas in August, 1867, and sat until August, 1868. It made awards aggregating \$1,253,310.30.

Following these awards came one of the most unfortunate experiences in diplomatic history. The Venezuelan Government, supported by many citizens of the United States, impeached the awards on the ground of fraud. It was asserted that the commission was corrupt; that there had existed a conspiracy to defraud the Venezuelan Government and its creditors, and that, therefore, the findings of the commission should be set aside. This formed the basis of a disagreement which lasted for nearly a quarter of a century. It was the subject of frequent debate in the Congress of the United States; it figured in Presidential messages, in public discussions, and in protracted diplomatic correspondence between the two Governments.

After much delicate negotiation, a convention was finally entered into between the Venezuelan representative at Washington and the Secretary of State of the United States creating a new claims commission. The ratifications were finally exchanged on the 3d day of June, 1889, and the commission sat at Washington from the following September until September, 1890. It was more fortunate than its predecessor, in that its awards were cheerfully adopted by both countries.

The commission of 1890, however, was simply a rehearing commission. The convention provided that the commissioners should hear and determine all claims which, by the terms of the convention of 1866, were proper to be presented to the mixed commission organized under that convention. This limitation explains to some extent why many of the claims which I shall present antedate the commission of 1890. Moreover, there are some claims to be presented to this commission which arose prior to the commission of 1867-68, but were not presented to it. There is, however, no limitation upon the present Commission. Under the terms of the protocol we are permitted to present all claims owned by citizens of the United States. We shall take full advantage of this, but we shall present no claim of the justice of which we are not thoroughly convinced.

In conclusion, let me say, we feel confident that the result of this proceeding will tend to knit still more closely the bonds of esteem and respect uniting our two countries, and will add still further to the dignity of that great principle of arbitration for which both of our Governments stand.

ADDRESS OF SEÑOR DR. F. ARROYO PAREJO, THE AGENT OF THE REPUBLIC OF VENEZUELA, BEFORE THE UNITED STATES AND VENEZUELAN MIXED COMMISSION AT THE SESSION OF JUNE 9, 1903.

[Translation.]

YOUR HONORS: I deem it a happy occasion which permits me to reply to the views and sentiments expressed so eloquently by the honorable agent of the United States of North America in the address which he delivered at the last session.

Equally with him, I believe, with all sincerity, that the establishment of this tribunal constitutes, above all, the solemn recognition of a principle in which are linked the dignity, the honor, and the important interests of the several political entities called nations; a principle Venezuela has advocated with continued effort from the moment in which she entered into independent existence and which, dating from the year 1864, is found among her fundamental canons.

The theory of arbitration as a method of settling the differences arising between nations represents without doubt one of the most

important advancements of the present age, which with justice prides itself on having uplifted humanity. And it is undeniable, your honors, and I am pleased to freely admit it, that in the labor for its definite recognition—which is in the highest degree a labor of civilization and a fruitful advocacy for betterment—the noble American nation has always been a most fervent and decided champion.

The clear demonstration of the resulting benefits which this doctrine should bring to nations, Venezuela hopes for from you. A thousand complex causes, which it would be inconsiderate to enumerate here, might have led her to a state which, though painful to patriotism, will never affect the dignity of the nation, inasmuch as, if obligations exist which until now she has involuntarily been unable to satisfy, she hereupon accepts and will always accept the consequent responsibilities, whatever they may be. This present Commission, in which we are taking part, is a plain confirmation of this assertion. She confides as firmly in the efficacy of the principle enunciated as in your unquestionable probity.

In the present instance the discharge of the trust confided to you is of easier fulfillment than is often the case. Since these commissions were instituted for an object eminently conciliatory, their respective framers have not desired to impose upon you the vexatious and complicated procedure of ordinary judgments, nor to subject your awards to the inflexible rules of determined statutory legislation. A broad conception of equity ought alone to inspire your decisions. They are, therefore, as the honorable American agent has stated with so much truth, veritable international courts of honor which shall proceed with full liberty as well in the ascertainment of facts as in the application of law.

I also share in the opinion which he has already expressed, that the respective Governments will have more than one cause of satisfaction for having arrived at such an agreement.

I would have nothing to take exception to in the brilliant oral exposition to which I have just referred, if it were not that, at its close, there is a contention to which, in the fulfillment of the special instructions which I have received from my Government, I must now make formal protest. After a succinct and exact review of the mixed commissions which have met heretofore for the settlement of claims pending between the two countries, the Hon. Mr. Morris announces that he will present claims of American citizens, founded on facts antedating the commission of 1867–68, but which were not submitted to that commission.

The honorable arbitrators will observe that even if the protocol last signed in Washington permits the presentation of and authorizes this commission to take cognizance of and decide every claim owned by American citizens, such stipulation must be limited not only in rigor of law, but also equitably and logically, to those (claims) which are subsequent to the year 1868, since the high contracting parties were not unaware that Article V of the convention of 1866 fixes a fatal delay for the presentation of claims prior to that year.

The article aforesaid states literally:

The decisions of this commission and those of the umpire shall be final and conclusive as to all pending claims at the date of their installation. Claims which shall not be presented within the twelve months herein prescribed will be disregarded by both Governments and considered invalid.

It would be of no avail to allege that the awards of the commission of 1867-68 were impeached on account of fraud—an accusation which was proved and recognized as true by both parties—because only the decisions rendered by that commission were declared null, and in no manner the provisions of the convention of 1866. These provisions were revived specifically by Article I of the treaty of 1889, which created the revisory commission of 1890.

If, then, the claims not presented within the period fixed by the convention of 1866 have been barred by the application of the law cited, with what right could they now be revived and submitted to the examination of this Commission?

I deem the point discussed of such great importance that I venture to respectfully pray the tribunal to settle it as a preliminary question, and I close wishing your honored members the greatest success in your deliberations.

F. ARROYO PAREJO.

PLEADINGS AND DECISIONS.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Ford Dix, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 1.
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BRIEF ON BEHALF OF THE UNITED STATES.

I.

STATEMENT OF FACT.

The United States presents in this case a claim on behalf of Mr. Ford Dix in the amount of \$21,295.50, and there is laid before the Commission the memorial of Mr. Dix, together with the documentary and other evidence on which his claim is based. This claim, as presented to the United States by Mr. Dix, was for a much larger amount and based partially upon injuries other than those included in the claim now presented. Under the well-established procedure in such cases the Government of the United States has first endeavored to ascertain the proper amount in which this and every other claim should be presented, and has therefore with the consent of Mr. Dix (see his letter of November 29, 1900), presented this claim only in the amount above stated and for the following items among those specified in the memorial of Mr. Dix:

Loss of 354 head of beef cattle, at \$30 (Venezuelan)	\$10, 620. 00
Loss of 388 head of beef cattle, at \$11 (difference between price obtained by Dix and that conceded by the Venezuelan officials to have been their worth)	4, 268. 00
Loss of 55 cattle (unsubstantiated by any written statement), at \$30 per head	1, 650. 00
Loss of other cattle and ranch animals	1, 320. 00
Amount paid for nonfulfillment of contract with Havana firm	2, 437. 50
Expenses	1, 000. 00
Total	21, 295. 50

The facts with reference to these claims are briefly as follows:

Mr. Ford Dix, who is a native-born citizen of the United States, embarked in the business of cattle raising for the market in Venezuela some time shortly prior to June, 1899, and in June, 1899, made a contract with the firm of Salmon & Woodrow, of Habana, to furnish them with a stipulated number of fat beeves at an agreed price of \$50 United States money, per head. In September, 1899, a larger number of cattle were taken from Mr. Dix's plantation by the troops of the

revolution led by Gen. Cipriano Castro. For 354 head of cattle so taken receipts were given by the Venezuelan authorities, setting forth that the cattle taken were worth not less than \$30 per head; 388 other cattle were thereupon sold by Mr. Dix at the price of \$19 per head, a loss of \$11 each, this forced sale being made necessary to prevent the destruction and loss of the balance of the herd, Mr. Dix having already been unable to obtain receipts from the Government for 55 cattle and other ranch animals taken by the revolutionary troops. By this taking of Mr. Dix's property by the Venezuelan authorities, Mr. Dix was unable to fill his contract with the firm in Habana, and was obliged to pay them \$2,437.50 damages for such breach. There is further inserted a claim by Mr. Dix for \$1,000 for personal expense to which he was put by these acts of the Venezuelan authorities.

These claims were submitted to the Venezuelan Government by the United States of America for settlement. The Government of Venezuela, as appears from the diplomatic correspondence which is also submitted, did not in any way contest the correctness of these claims, either in their amount or as to the liability of the Government therefor, but objected solely upon the ground that the claimant had not proceeded to prove his claim in accordance with the local laws of the Republic of Venezuela.

II.

The evidence submitted sustains Mr. Dix's claim to the full amount of \$21,295.50.

The evidence as to the cattle taken by the revolutionary troops, both as to the number and as to the value, is documentary, and can not admit of dispute. The same is true as to the price for which the other cattle were sold and the resultant loss, and also as to the amount of damages paid for breach of contract. The other claims are supported by the sworn statements of Mr. Dix. They are supported, moreover, by all the circumstances of the case. The fact that cattle were taken by the revolutionary troops must be conceded, as well as the fact that Mr. Dix succeeded in obtaining the receipts which are offered in evidence only after great difficulty and considerable lapse of time. These circumstances make the probability of other cattle having been taken so strong that his direct and positive statement is amply supported by this presumption of probability.

The rules both as to character and weight of evidence are very different upon a hearing before a tribunal such as this than the rules of evidence in use under any particular system of municipal law. This distinction has been very clearly recognized. See, among others, Caldera cases, 15 Court of Claims Reports, 546, in which case Judge J. C. Bancroft Davis, speaking of the procedure proper to be observed by the Court of Claims, as well as by the board of commissioners, said:

In the means by which justice is to be attained, the court is freed from the technical rules of evidence imposed by the common law, and is permitted to ascertain truth by any method which produces *moral conviction*. This proposition is self-evident. The restraints which municipal law imposes upon the taking and use of evidence vary greatly in different countries. In its broadest sense the word evidence includes all means by which any alleged fact, the truth of which is submitted to examination, may be established or disproved. (1 Green. Ev., sec. 1.) If it were necessary to justify the granting of such wide powers to the commissioners it would be easy to do so. International tribunals always exercise great latitude in such matters (Meade's case, 2 Ct. Claims, R., 271), and give to affidavits, and sometimes even to unverified statements, the force of depositions.

Article II of the protocol under which this Commission was formed moreover expressly extends the consideration of the Commissioners to any documents or statements which may be presented to them by or on behalf of the respective Governments.

Under these rules the evidence in this case is ample to support Mr. Dix's claim to the full sum of \$21,295.50.

III.

The Venezuelan Government is responsible for the full amount of this claim.

It is too well settled as a principle of international law to need discussion that in case of a successful revolution the revolutionary government may be regarded as a de facto government even before it actually succeeds in establishing itself in the government. See the cases cited in Moore's International Arbitration, pages 2972 et seq.

So far as concerns the cattle taken, for which receipts have been given, this liability has been recognized by the Venezuelan authorities, and their liability for this part of the claim can not be disputed. There can be no doubt that the Venezuelan Government is also responsible for the other claims. So far as the other cattle and ranch animals taken are concerned this is apparent. So far as concerns the loss of 388 head of cattle sold at a sacrifice and the damages paid for breach of contract, there can be no question that they were the direct, immediate, and natural result of the acts of the revolutionary troops in taking the cattle of Mr. Dix, and hence results for which the Venezuelan Government is equally responsible. The claim of \$1,000 for extra expenses to which Mr. Dix was put in this connection is also a matter for which the Venezuelan Government should be held responsible. It is and must be apparent from the facts of this case that the claim of a thousand dollars is a very reasonable estimate of the extraordinary expense to which Mr. Dix must have been put by the wrongful acts complained of.

IV.

The correctness of the claim of Mr. Ford Dix and its liability therefor have been practically conceded by the Venezuelan Government.

This claim was the subject of diplomatic correspondence between the Government of the United States of America and that of the Republic of Venezuela in which the claim in its present condition, with all documentary matter, was submitted to the Government of Venezuela for settlement. The reply of the Government of Venezuela to the representative of the Government of the United States can be regarded in this case and in all similar cases as equivalent to an answer on behalf of the Venezuelan Government and as an admission of all the facts which are not expressly controverted. It is true that in the reply in this particular case the Venezuelan Government makes use of the expression "that it does not attempt to decide as to the legitimacy of the claim," but the fact remains that it does not dispute the truth of any of the facts set forth, the correctness of the amount claimed nor its own liability therefor.

V.

The position of the Venezuelan Government that this claim should have been submitted to its local tribunals for adjudication is not well founded.

Without in any way controverting the truth of any of the statements on which this claim is based or the correctness of the amount claimed or its own liability therefor, the authorities of the Republic of Venezuela contended merely that the Government of the United States ought not to intervene because the claimant had a proper and sufficient remedy in the local tribunals of that country. This position of the Republic of Venezuela was wholly untenable. The cases in which one State has the right to intervene to protect the rights of its citizens resident or temporarily within the domain of another State fall into two general classes. The first, cases in which the citizen has received positive maltreatment at the hands of the foreign government or those for whom it is directly responsible. The second, cases in which the citizen has been denied ordinary justice in the foreign country. In this latter class a distinction again is to be made between cases of a denial of justice in actions against the foreign government as such and those in which there is a denial of justice in suits between individuals to such an extent that the foreign government may be held responsible.

The right of intervention in the first class of cases is direct and immediate and there is no necessity for resort to local tribunals as a condition precedent to an application to the home Government.

The wrongs here complained of arising from the taking of cattle and property by the troops of the revolutionary party, that has since been established as the government of the country, makes the case clearly one of the first class, nor does the fact that the Venezuelan Government has recognized in writing part of the claim in any way alter this fact.

Even if we were to concede that the claims were of such a character as ought to be first submitted before a local tribunal for adjudication, yet the Republic of Venezuela is not in a position to call for such submission. The decree of 1873 establishing a high federal court, before which all claims against the Government must be adjudicated, contains provisions which make the latter procedure practically a denial of justice. It is provided in substance in that decree that should it clearly appear that any claimant has exaggerated the injuries suffered by him, he shall lose whatever right he may have had, and incur a fine of from 500 to 3,000 venezolanos (\$500 to \$3,000) or imprisonment from six to twenty-four months.

The letter of the Venezuelan authorities in citing the rendition of this decree preceded it with the statement that in 1869 a report was made to the Venezuelan Congress that the revenues of the country were being consumed in the payment of foreign claims and calling upon Congress for some remedy in the situation. This connection makes it, upon their own statement, manifest that this decree was devised in its present form as an express means of preventing foreigners from instituting or prosecuting claims against the Venezuelan Government. This was its origin and spirit, and such has been its manifest effect.

It would be useless to discuss this situation further. It is clear that a court so established and the right of appeal, to which it was coupled with such restrictions, can not be compared either to the Court of Claims of the United States or to any other judicial tribunal to which it has been held that claims of foreigners, as well as domestic citizens, should first be submitted.

The views above expressed are clearly supported by the authorities. See Phillimore's International Law, Volume II, pages 3 et seq., and especially the following language on page 12:

VII. It may indeed happen, as the same author most justly observes, that the debtor State may adopt measures of domestic finance, so fraudulent and iniquitous, so evidently repugnant to the first principles of justice, with so manifest an intention of defeating the claims of its creditors, as to authorize the Government of the creditor in having recourse to acts of retaliation, reprisals, or open war—such measures, for instance, as the *permanent* depreciation of coin or paper money, or the absolute repudiation of debts contracted on the public faith of the country.

The instances above quoted are matters of finance. The same principle applies absolutely to an attempt to accomplish the same thing by a provision such as was made by Venezuela in this case, making recourse to its tribunals subject to risk both of financial loss and personal imprisonment.

VI.

The position of the Venezuelan Government that this claim should have been submitted to its local tribunals, even if well founded, has been expressly waived by the signing of the protocol under which this Commission is appointed.

Whether the position of Venezuela, as outlined in the correspondence of its diplomatic representatives with those of the United States, is or is not well founded, it has never been recognized by the United States, but has long been a subject of controversy between the two countries and has been one of the essential causes for nonsettlement of many of the controversies which are to be submitted to this Commission. It was largely, if not entirely, because of disagreement with respect to this position of Venezuela that the two countries were unable to amicably agree upon the settlement of this and other claims. And it was because of this disagreement on this question to a large extent that there arose the necessity for this Commission.

The language of the protocol itself can bear no other interpretation. Under its provisions—

All claims owned by citizens of the United States of America against the Republic of Venezuela and which have not been settled * * * and which shall have been presented to the commission hereinafter named * * * shall be examined and decided by a mixed commission * * *. The commissioners, or in case of their disagreement, the umpire shall decide all claims upon a basis of absolute equity without regard to objections of a technical nature or of the provisions of local legislation.

It would have been difficult to have chosen language more directly applying to this position which has been taken by the Republic of Venezuela in the past. The express exclusion from the consideration of the Commissioners of any local legislation excludes the decree of 1873 as well as any other local enactments, for by the word local we are to understand Venezuelan law or United States law, as the case

may be, as being local to each of those countries in distinction from those principles of natural law which are alone applicable as between two or more countries.

It has moreover been expressly and repeatedly held that the reaching of an agreement for arbitration or the appointment of a commission under circumstances such as this, is an express waiver of any provisions of law whereby the claims should first have been submitted to local tribunals.

In the controversies which arose between the United States and Great Britain under the treaty of November 19, 1794, commonly called the Jay Treaty, it was and had been contended by Great Britain that the claims of citizens of the United States could and should be first submitted to the determination of the local tribunals of England. But it was held by the commissioners that the making of the treaty within certain lines defined by it as to the class of cases which should be taken up and substituted the commissioners as a court absolutely in place of any such local tribunals and was a waiver of any claim that the cases should first have been submitted to such local tribunals for adjudication. (3d Moore's International Arbitration, pp. 3073, 3101 to 3115, 3161 to 3206.) See also the opinion of William R. Day, as an arbitrator appointed under the protocol between the United States and the Republic of Haiti, in which Judge Day uses the following language with reference to a similar claim that the cases should have been first submitted to adjudication of local tribunals:

The arbitrator in this case, however, is given jurisdiction of the differences between the two Governments by the terms of the arbitral agreement, giving him jurisdiction and authority to determine certain differences. (For. Rels. 1901, p. 275.)

The protocol in this case having given this Commission power to hear and determine all claims owned by citizens of the United States against the Republic of Venezuela, its power is unlimited to hear and determine all such claims whether they might or might not have been otherwise a proper subject for adjudication by some local tribunal of the Republic of Venezuela.

The contention of the Republic of Venezuela in this respect has therefore been abandoned, and the submission of all controversies to this Commission conceded by its executing the protocol under which this Commission is appointed.

VII.

An award should be made in this case for the full amount claimed, to wit, \$21,295.50.

The facts in this case being, as we have seen, clearly established and being, in fact, practically undisputed, and the only cause assigned by the Republic of Venezuela for its unwillingness hitherto to recognize and pay the same, to wit, that the claim should first be adjudicated by its local court, having been waived and abandoned by its consent to the establishment of this Commission, it is clear that the Republic of Venezuela can no longer advance any pretense why Mr. Ford Dix should not recover the amount which he now claims.

An award of that amount should be made.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

ANSWER.*Honorable Members of the Venezuelan-American Mixed Commission:*

I have carefully studied the claim presented by the American citizen Ford Dix, and I consider that the injuries of which he complains, and on account of which he asks indemnity of Venezuela, have been estimated by him in an exaggerated and arbitrary manner.

Before entering into an analysis of the facts which form the basis of the claim, I think that before a tribunal of arbitration, of the special kind that this is, it is proper to note a moral consideration which must contribute in a large degree in fixing a true criterion of equity in the case under dispute. Venezuela, on account of her adverse fortune, has since the year 1892 been the victim of civil war. During a period of eleven years armed revolutions have succeeded one another almost without interruption, draining the fountains of her public wealth and hindering her progressive march. This is a fact generally known, since the press of half the world has occupied itself on various occasions with these movements, commenting on them, as is natural, in prejudice to our position as a nation. About the year 1898, at the time when the claimant arrived in Venezuela, the turbulent condition of our country was then unfortunately so notorious that it could not be unknown to anyone. On the other hand, it can not be conceived that a foreigner who goes to establish himself in a country and to undertake there negotiations, which require a considerable outlay of capital, should not have informed himself by the proper means concerning the conditions in said country. The claimant, therefore, can not plead ignorance, and if he judged that the benefits which he might derive from the business in which he proposed to embark were well worth while to incur the inherent risks of the negotiation, it is clear that from then on he accepted such risks. Besides, it is a principle of public law, generally recognized and accepted, that a foreigner "who takes up his residence in a country accepts willingly and beforehand the attendant dangers to which said country is exposed, and as he shares in the advantages enjoyed by the natives he ought also to resign himself to share in their misfortunes." It is certain that not only foreign war but also civil ought to be considered among these risks. From what has been said it should not be considered that the Venezuelan Government seeks to shirk the responsibilities which in justice can be charged to it for acts committed by its troops, nor that it is not disposed to admit such responsibility from the very moment when it is established according to law.

If the American citizen, Ford Dix, has not already been paid for what appears to have been expressly acknowledged due him in the documents produced in evidence, it should be attributed only to the fact that the Government has established certain formalities for determining this class of payments to which the claimant has not submitted himself. On examining the injuries which the claimant claims to have suffered we must distinguish between those which were occasioned by the troops of the Government and those caused by the forces which were in arms against its authority. With respect to the first, it is indubitable and beyond discussion that if it is possible to establish them in justice and demonstrate that they did not arise from acts of legitimate defense, the responsibility on the part of the Government is

fixed. With respect to the second, a previous question arises which the tribunal ought to decide and which has already been determined by the precepts of public law. According to these precepts, in the cases of civil war, governments are not responsible for the damages caused to the interests of foreigners by rebel troops, except when it is proved that they withdrew their protection and that when they were able to prevent such damages they did not do so. Now, then, in the case under discussion this proof has not been established. In consequence, the indemnity which is asked on this account has no foundation in law or in equity.

Having laid down the general principles which precede, I shall confine myself to considering, one by one, the points of the argument made by the honorable agent of the Government of the United States.

Above all it is necessary to observe that the Government of Venezuela has never admitted this claim, as the argument to which I refer would seem to indicate. The Venezuelan foreign office, in the diplomatic correspondence which was exchanged between it and the legation of the United States, confined itself to sustaining the principle of territorial jurisdiction for taking cognizance of and deciding this class of claims and, if it did not contradict the facts on which the present claim is founded, it was because the controversy concerning this point was not within its province. On account of such failure its implied admission of them can not in anywise be inferred. I consider that it would be useless to treat here of the question of the jurisdiction of this tribunal to take cognizance of the claim presented. Although Venezuela has always maintained, in similar cases, the exclusive jurisdiction of its tribunals, the last protocols signed in Washington imply a revocation of this jurisdiction, necessitated by the force of circumstances, and concerning which there has been a proper protest by the party authorized. The tribunal is, therefore, now competent.

POINT I.

The obligation on the part of Venezuela to pay Mr. Ford Dix the value of 354 head of cattle at the price of 30 pesos, *sencillos*, per head, is not capable of being disputed because, although said cattle were taken by the rebel forces, the Government admitted responsibility in regard to them, as appears from the vouchers which were executed in favor of the claimant. With respect to this the honorable arbitrators will observe that the price fixed for each head of cattle is more than what is ordinarily to be obtained in this country, and that the Government wished to include in the total not only the intrinsic value of the cattle but also the damages probably occasioned by their loss. It would be easy to establish proof in this regard if the tribunal should consider it conducive to the better investigation of the claim.

II.

The honorable arbitrators will observe that the depositions taken at the instance of Mr. Ford Dix, to prove the loss of 242 head, labor under a defect which precluded them from having any force in justice. The laws of every civilized country demand in witnesses *convicción de oralidad*; that is to say, that they shall not limit themselves to answering simply the interrogatory propounded to them, but that they shall

declare at length the reason for their statements. The object of the law is obvious, because it is evident that were it otherwise, it would be easy to suggest to the witness what it was desired that he should answer. Now, then, of the witnesses examined in the depositions to which I am referring, only one fulfills the condition required. The depositions of the others are therefore of no value.

With respect to the loss of 55 head and other animals, which the claimant alleges, it will be seen that there is no other evidence in support thereof than his own personal affirmation, and it is a precept sanctioned by universal jurisprudence that upon the claimant or actor rests the burden in every case of proving the assertion which he makes.

III.

Nor is the indemnity which the claimant demands on account of the low price obtained for the 388 head which he sold to Braaschi & Sons admissible. This was a voluntary act on his part, the consequences of which can not, without notorious injustice, be imputed to a third person.

IV.

The indemnity to compensate for the losses arising out of the failure to carry out the contract entered into by the claimant in Havana, is equally inadmissible; first, because no proof of such contract exists, nor of the price (grossly exaggerated) which was fixed for each head; second, because even though the claimant had all his cattle ready to embark, he could not have accomplished this in time, as the port of Puerto Cabello was closed for some months on account of the resistance in that place of Gen. Ontario Paredes, a circumstance which obliged the Government of the Republic to reduce it by force. This fact is notorious.

V.

I deny also the claim for \$1,000, in which sum the claimant estimates the expenses incurred in efforts to obtain his cattle. These expenses, as I have said, were included in the price which the Government recognized in the vouchers executed.

In fine, concerning the indemnities claimed by the American citizen, Ford Dix, those only can be admitted which refer to the amounts which have been acknowledged by the Government, without interest, because the latter has not delayed as has been shown.

In closing this argument I comply with my official duties in refuting a statement of the honorable agent of the United States.

Referring to the executive decree of 1873 which prescribes the proceedings which must be observed in the prosecution of claims of foreign citizens against the nation, Mr. Morris designates said law as odious, on account of the restrictions which it contains, and that in its intent they themselves constitute a manifest denial of justice. The promulgation of said law followed in effect the cogent necessity of preventing adventurers of all nations from continuing to exploit (as had been the case up to that time), under the shadow of their respective national flags, the weakness of Venezuela. It is a means of legitimate defense and beyond all doubt a restrictive law; but in spite of the

extreme rigor of its provisions, the legitimate exercise of a right was not and never has been prevented, because the consideration of fear can never frighten off the one possessing such right.

Caracas, June 23, 1903.

F. ARROYO PAREJO.

Another reason: Besides the reasons alleged to make manifest the inefficacy of the depositions presented as proof of the loss of 242 head, there exists another which the tribunal can not fail to take into account, namely, that by the internal laws this species of proof must be taken with the intervention of the party against whom they operate.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Ford Dix, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 1.
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REPLICATION ON BEHALF OF THE UNITED STATES.

The United States takes issue on the following points set forth in the answer of Venezuela in the above matter:

I.

It is submitted that the proof of the value of the cattle taken has been sufficiently established both by the various receipts therefor presented in evidence and by the sworn memorial of the claimant; and that there is no indication in any of the said receipts that they were intended to include not only the actual value of the cattle taken but also the damages probably occasioned by their loss.

II.

The stand assumed by Venezuela that the evidence adduced in the justificativo submitted is insufficient is not well taken. Any evidence which tends to produce a moral conviction in the minds of the court is sufficient before a tribunal of this character. In the Halifax commission it was contended by the British agent that *ex parte* affidavits should not be admitted; while Mr. Foster, the representative of the United States, on the other hand, maintained their admissibility, the commissioners being left to attach to them such weight as they might deem proper. The commissioners after deliberation decided that such affidavits should be admitted. Also in the case of *Montijo*, between the United States of America and Colombia, Mr. Robert Bunch, the umpire, made the following statement:

To the first of the allegations the undersigned replies that, although independent testimony of any fact is always desirable, there are many cases in which it can not be procured. But this is no reason for excluding the evidence of eyewitnesses of

and participators in a transaction on the ground that they may be interested, peculiarly or otherwise, in its solution. To render such testimony invalid it would be necessary to prove a notorious absence of credibility in the witnesses, or a manifest combination or conspiracy on their part to swear falsely. It would surely not be held that in a trial for mutiny committed on board of a ship on the high seas, the evidence of a portion of the crew could not be received against another portion because the informants might expect a reward from the owners, or a share in the property which they might have contributed to save by their resistance to the mutineers. (Moore's International Arbitrations, vol. 2, pp. 1434-1435.)

Moreover in the Caldera cases (15 C. Cls. R., 546), which I have referred to in my original brief, Judge Davis holds as follows:

In the means by which justice is to be attained, the court is freed from the technical rules of evidence imposed by the common law, and is permitted to ascertain truth by any method which produces *moral conviction*. This proposition is self-evident. The restraints which municipal law imposes upon the taking and use of evidence vary greatly in different countries. In its broadest sense the word evidence includes all means by which any alleged fact, the truth of which is submitted to examination, may be established or disproved. (1 Green, Ev., sec. 1.) If it were necessary to justify the granting of such wide powers to the commissioners, it would be easy to do so. International tribunals always exercise great latitude in such matters (Meade's Case, 2 C. Cls. R., 271), and give to affidavits, and sometimes even to unverified statements, the force of depositions.

If the appearance of the Venezuelan Government at the taking of the testimony in support of these matters were necessary, how long that Government would delay its attendance, or whether it would appear at all, would be a matter of speculation only.

We contend, therefore, that the position of the Venezuelan Government as to those cattle referred to in the justificativo as to the 55 head of cattle which Mr. Dix swears to in his memorial and as to the indemnity which the claimant demands by virtue of the sacrifice of cattle sold to Braschi & Sons, also sworn to and evidenced by receipt, can not be sustained.

III.

Regarding the contention of the Government of Venezuela that the claimant can not recover for the injuries arising out of his failure to carry out the contract entered into with the Habana firm, we submit that this loss is directly chargeable to the acts of the Venezuelan Government.

The statement that no proof of such contract exists is incorrect, inasmuch as the contract has been submitted in evidence.

IV.

As to the claim for \$1,000, estimated by the claimant as his expenses incurred in connection with this matter, we submit that it is fair, moderate, and just.

V.

This claim is made only after the reduction of many thousands of dollars in the amount originally demanded, in order to avoid inflicting any unnecessary hardship on the Government of Venezuela.

An award should be made to the claimant for the full amount of his claim.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Ford Dix, claimant, <i>v.</i> THE REPUBLIC OF VENEZUELA.	}	No. 1.
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DECISION AND AWARD.

The Commission awards to the claimant the sum of \$11,837.53 in United States gold.

Opinion by Bainbridge, Commissioner.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Ford Dix, claimant, <i>v.</i> THE REPUBLIC OF VENEZUELA.	}	No. 1.
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BAINBRIDGE, *Commissioner.*

The statement of facts upon which this claim is based is substantially as follows:

In September, 1899, at the beginning of the revolution led by General Castro against the government of President Andrade, Ford Dix, a native-born citizen of the United States, was engaged in the cattle business in Venezuela, having leased pastures near Valencia and Miranda, upon which he alleges he had at the time mentioned about 800 head of beef, 21 milch cows, 16 yearling calves, 6 saddle horses, and 1 mule. Dix claims that he had, on July 3, previous, entered into a contract with the firm of Salmon & Woodrow, of Habana, Cuba, by which he agreed to deliver said firm between September 15 and October 7, 1899, 750 to 800 head of cattle, to weigh 750 to 900 pounds each, for which said firm was to pay him \$50 per head.

On September 15 a battle occurred at Tocuyito, between the Government forces and the revolutionists in which the Government army was completely routed. The revolutionary army remained in that section of the country for several months, and at various times between September 15 and December 31, 1899, Dix's cattle were confiscated for the use of the army. Dix alleges that they took from him 409 beeves, 16 milch cows, 16 calves, 4 saddle horses, and 1 mule; that to avoid losing the remaining 388 head he sold them to Braschi & Sons, of Valencia, at a sacrifice, viz, \$19 per head, Venezuelan; that by reason of the above, and to the fact that there was no communication with the seacoast, he was prevented from complying with his contract with Salmon & Woodrow, and was obliged to pay said firm \$1,875 damages on account of his failure to deliver the cattle as required by the terms of said contract. Dix succeeded in obtaining from the revolutionary authorities evidence of the taking of 252 head of cattle, and subsequently, upon personal request of Dix to be paid for his cattle, General Castro, after assuming the office of President, caused to be issued to Dix a "Government warrant" for the value of 102 head.

No documentary evidence is submitted in support of the claimant's allegation of the taking of the other 55 beeves, 16 cows, 16 calves, 3

horses, and 1 mule. The taking of 1 horse is proven by an original telegram signed by General Castro.

Mr. Dix also makes a claim for expenses which the above circumstances caused him to incur in traveling expenses, railroad fares, hotel bills, etc.

As submitted to this Commission, the claim of Mr. Dix may be summarized as follows:

Loss of 354 head of beef cattle, at \$30 (Venezuelan)	\$10,620.00
Loss of 388 head of beef cattle, at \$11 (difference between price obtained by Dix and value stated in vouchers given)	4,268.00
Loss of 55 head of beef cattle for which no vouchers were obtained, at \$30 per head	1,650.00
Other cattle and ranch animals as follows:	
1 saddle horse	\$150
1 saddle horse	100
1 saddle horse	200
1 saddle mare	50
1 saddle mule	250
16 milch cows, at \$35 per head	560
16 calves, at \$10 per head	160
	<hr/>
	1,470.00
Amount paid for nonfulfillment of contract with Salmon & Woodrow ...	2,437.50
Expenses	1,000.00
	<hr/>
Total (Venezuelan)	21,445.50

The revolution of 1899, led by Gen. Cipriano Castro, proved successful, and its acts, under a well-established rule of international law, are to be regarded as the acts of a *de facto* government. Its administrative and military officers were engaged in carrying out the policy of that Government under the control of its executive. The same liability attaches for encroachments upon the rights of neutrals in the case of a successful revolutionary government, as in the case of any other *de facto* government. What the liability is has been clearly stated in the case of *Shrigley v. Chile*, decided by the United States and Chilean Claims Commission of 1892, as follows:

Neutral property taken for the use or service of armies or functionaries thereunto authorized gives a right to the owner to demand compensation from the government exercising such authority.

In the case before us, so far as the 354 head of cattle are concerned, the taking of which by the revolutionary army is in various forms evidenced, the liability of Venezuela to compensate Mr. Dix is determined by the rule above quoted. And this liability may fairly be extended to include compensation for the other stock, either taken by the revolutionary troops or lost as the direct result of the depredations of the army in the stampeding of the herd, the destruction of fences, etc. That Dix's cattle were taken under authorization of the military officers is proved by the receipts given by Generals Lovera, Martinez, and Lima and the "Government warrant" given by President Castro. Dix states that General Hernandez told him that he would exempt his cattle as far as possible, but that "he did not propose to face defeat for the want of something to eat for his troops."

The value of the cattle taken, as stated in the receipts and the "Government warrant" given by General Castro, is \$30 (Venezuelan) per head. As to the cattle for which Dix could not obtain receipts, but whose loss he establishes by other documentary evidence, their value is stated by Dix and other witnesses as "at not less than one hundred and twenty bolivares per head in this market" (\$30 Venezuelan). The

value of the 409 beeves taken from or lost by Dix was therefore \$12,270 (Venezuelan). To this must be added the value of the mule, saddle horses, cows, and calves also taken from him, amounting to \$1,470 (Venezuelan). Thus the total value of Mr. Dix's stock, confiscated or lost, amounted to \$13,740 (Venezuelan).

On December 18, 1899, Mr. Dix sold and delivered at Los Guayos, to the firm of A. Braschi & Sons, 388 beeves at \$19 (Venezuelan money) per head. He says: "I made a sale—that is I sacrificed them—to save *something*." He makes a claim against the Venezuelan Government for \$4,268, the difference between the sum received by him from Braschi & Sons and the alleged actual value of the cattle (to wit, \$30 per head) which he sold to them.

Governments, like individuals, are responsible only for the proximate and natural consequences of their acts. International as well as municipal law denies compensation for remote consequences in the absence of evidence of deliberate intention to injure. In my judgment the loss complained of in this item of Dix's claim is too remote to entitle him to compensation. The military authorities, under the exigencies of war, took part of his cattle, and he is justly entitled to compensation for their actual value. But there is in the record no evidence of any duress or constraint on the part of the military authorities to compel him to sell his remaining cattle to third parties at an inadequate price. Neither is there any special animus shown against Mr. Dix, nor any deliberate intention to injure him because of his nationality. He refers himself to the estimation in which he was held by General Castro. If the disturbed state of the country impelled Mr. Dix to sacrifice his property, he thereby suffered only one of those losses due to the existence of war, for which there is, unfortunately, no redress.

Upon similar grounds the claim of Mr. Dix to be reimbursed by the Venezuelan Government for the amount alleged to have been paid by him to the Habana firm as damages for the nonfulfillment of his contract must be disallowed. Interruption of the ordinary course of business is an invariable and inevitable result of a state of war. But incidental losses incurred by individuals, whether citizens or aliens, by reason of such interruption are too remote and consequential for compensation by the government within whose territory the war exists.

Moreover it is very probable that Mr. Dix could not have complied with his contract even had the revolutionists left him in undisturbed possession of his cattle, for the reason that the port of Puerto Cabello was closed for several weeks. Dix says, "I realize and realized that had I had undisturbed possession of my cattle I could not have shipped them within the allotted time on account of the revolution." Had Mr. Dix been able to complete his contract he would have made a large profit; instead he appears to have suffered a loss. "I would not have gone to that country," he says, "to encounter the known difficulties, not to mention the unknown, for just a reasonable profit. I went after the fancy profits which I ascertained were to be made." He must, however, be held to have been willing to accept the risks as well as the advantages of his domicil in a country in a state of civil war.

These principles also dispose of Mr. Dix's claim for expenses. It is doubtless true that he was subjected to considerable inconvenience and expense; but his rights and immunities in that regard are not dif-

ferent from those of other inhabitants of the country, and "no government compensates its subjects for losses or injuries suffered in the course of civil commotions." (Hall.)

In view of the foregoing an allowance is made in this claim in the sum of 13,740 Venezuelan dollars, with interest at 3 per cent per annum from January 1, 1900, to December 31, 1903, the latter being the anticipated date of the final award by this Commission. The total sum allowed is, therefore, 15,388.80 Venezuelan dollars, equivalent to the sum of \$11,837.53 in gold coin of the United States.

NOTE.—Wherever in this opinion the words "Venezuelan dollars" are used, the meaning thereof is "Venezuelan pesos" of the value of four bolivares each.—W. E. B.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of Ford Dix, claimant, against the Republic of Venezuela, No. 1, the sum of eleven thousand eight hundred thirty-seven and 53/100 dollars (\$11,837.53) in United States gold coin is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered July 7, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Catalina Violanti Paez and Jose Antonio Paez, claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 2.
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BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case a claim of Catalina V. Paez and Jose Antonio Paez, in the sum of 12,000 bolivares (about \$2,400) with interest from December 18, 1897.

Claimants are native-born citizens of the United States, the only children of Ramon Paez, deceased, who was a naturalized citizen of the United States.

The claim is based upon an instrument in writing, executed by the minister of the interior of the Republic of Venezuela, under the authority of the President of the Republic in counsel with his ministers, whereby there was ordered to be paid to the claimants the sum of 12,000 bolivares.

There are set forth in the evidence letters of April 28, 1898, June 4, 1898, and November 15, 1898, from the authorities of the Republic of Venezuela, a letter from its then President, Ignacio Andrade, acknowledging this claim, and advancing as the sole reason for its non-payment the insufficiency of funds.

The claim therefore presents a conceded and admitted liability on the part of the Republic of Venezuela, and an award should be made in favor of the claimants for the full amount, with interest at the legal rate from December 18, 1897. Whatever question there may be as to the allowance of interest upon unliquidated claims, there can be no question as to the right to interest upon a contractual obligation such as the basis of the claim in this case. The amount due on this claim on June 1, 1903, with interest at 3 per cent from December 18, 1897, is \$2,792.15.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Catalina V. and José A. Páez, claimants,	} No. 2.
v.	
THE REPUBLIC OF VENEZUELA.	

DECISION AND AWARD.

The Commission awards to the claimants the sum of \$2,550 in United States gold.

Opinion by Doctor Paúl, Commissioner.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Catalina V. and José A. Páez, claimants,	} No. 2.
v.	
THE REPUBLIC OF VENEZUELA.	

Doctor PAÚL, *Commissioner*:

The United States presents before this Commission a claim of Catalina V. and José A. Páez for the sum of Bs. 12,000 and interest from December 18, 1897.

It appears that the claimants, Catalina Violante Páez and José Antonio Páez, legitimate children of Ramón Páez, a naturalized citizen of the United States, are creditors of the Government of the Republic of

Venezuela for the sum of Bs. 12,000, which in accordance with a resolution dictated by the President of the Republic in ministerial council and ratified by the minister of the interior in Caracas on the 18th of December, 1897, was granted to them in the shape of quarterly payments of Bs. 100 payable from the 1st of January, 1898, through the mercantile firm of H. L. Boulton & Co., of this city, in compensation for special services rendered to the Government with great efficiency by the said Ramón Páez.

From the letters addressed by General Ignacio Andrade to Miss Catalina Páez under date of the 15th of November, 1898, and on the 17th of June of the same year by Mr. Manuel Antonio Matos, minister of finances at the time, it appears that the Government did not comply with the payments agreed upon, owing to the scarcity of the revenues.

This claim has been accepted by the agent for Venezuela before this Commission as well founded.

Therefore the claim is accepted for the principal sum of Bs. 12,000 and yearly interest at the rate of 3 per cent, to be counted from the average date of the five years at the end of which this obligation should have been canceled if paid at the rate of Bs. 200 a month, that is to say, from the 1st of July, 1900, to the 30th of December of the present year. This interest represents the sum of Bs. 1,260, which with principal amounts to the sum of Bs. 13,260, or figured at the exchange of Bs. 5.20 per dollar American gold gives the sum of \$2,550 American gold, for which this claim is accepted.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of The United States of America on behalf of Catalina V. and José A. Páez, claimants, against The Republic of Venezuela, No. 2, the sum of two thousand five hundred and fifty dollars in United States gold coin is hereby awarded in favor of said claimants, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,
Commissioner on the Part of the United States of America.

J. DE J. PAÚL,
Commissioner on the Part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRÓN UZTARIZ,
Secretary on the Part of Venezuela.

RUDOLF DOLGE,
Secretary on the Part of the United States of America.

Delivered June 26, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Corinne B. De Garmendia, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 3.
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BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of Corinne B. De Garmendia, as the sole legatee of Carlos G. De Garmendia, for the balance due upon an admitted obligation, which amounted on the 27th of February, 1890, to the sum of \$90,767, upon which there has since been paid the sum of \$11,600. The claim is for the balance, with interest from February 27, 1890.

The claimant, Madame Corinne B. De Garmendia, is a native-born citizen of the United States and is the sole legatee of her late husband, Carlos G. De Garmendia, in whose favor the claim arose. Carlos G. De Garmendia was a naturalized citizen of the United States, having been naturalized in 1873, prior to the origin of the claim in this case.

The memorial and petition presented narrated at some length the circumstances out of which the claim arose. For the purpose of determining the claim, however, this Commission need only examine the certified copy from the record from the financial department of the minister of the treasury, of which both the original and a translation are submitted, whereby it appears that Carlos B. De Garmendia made a claim for 431,500 bolivars, amounting to the sum of \$90,767. This claim was recognized by a resolution passed by the committee of examining the acknowledgment of debts on the 27th of February, 1890, and approved, and 40,000 bolivars (about \$10,000) ordered to be paid upon account. This sum was paid on February 26, 1891. There was subsequently paid the further sum of \$1,600 on account in the month of January, 1898.

The evidence in this case shows an admitted liability, recognized by the official records and proceedings of the Venezuelan authorities, conceding that there was due to Carlos G. de Garmendia, on the 27th of February, 1890, the sum of \$90,767. This claim was never disputed by the authorities of the Republic of Venezuela. On the contrary, there have been renewed and repeated assurances of its payment, as well as a recognition of the liability by the payments which have been made on account.

Whatever question there may have been, if any, as to the amount claimed for damages, these questions have all been removed by the action of the committee for examining the acknowledgment of debts. This claim is made upon an acknowledgment contained in a record of the Treasury Department of the Republic of Venezuela, made at that time, conceding a liability of \$90,767.

The claim may be stated as follows:

On the 27th of February, 1890, there was an acknowledged debt on behalf of Venezuela of	\$90,767.00
On the 26th day of February, 1891, a payment was made of	10,000.00
We have therefore to calculate interest on \$90,767, at 3 per cent, until the payment of the first installment, which amounts to....	\$2,715.55
Sometime in the month of January, 1898, an installment was paid of	1,600.00
We have therefore to calculate interest at 3 per cent on	80,767.00
from February 26, 1891, to, say, the 15th of January, 1898, which amounts to	16,653.03
Since the month of January, 1898, no further payment on account has been made, and we have therefore to calculate interest at 3 per cent on the sum of	79,167.00
from the 15th of January, 1898, to the 1st of June, 1903, which amounts to	12,759.05
The total interest due is	32,127.63
Balance of principal	79,167.00
Grand total	111,294.63

An award should therefore be made for the sum of \$111,294.63 for the amount due and unpaid on the 1st of June, 1903. There can be no question as to the right to interest on this admitted contractual obligation of the Republic of Venezuela.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

No. 3.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of Venezuela before this honorable Commission, has considered the claim presented by Mrs. Corinne de Garmendia in her capacity as heir of her deceased husband, Carlos G. de Garmendia, an American citizen, and respectfully calls the attention of the tribunal to the following:

That according to the original record which is produced, the predecessor of the claimant never succeeded in proving before the authorities of Venezuela, nor before the bodies organized to take cognizance of that class of claims, the foundation of his own.

The payments on account which are alleged, were ordered by virtue of personal acts of some of the functionaries contrary to express laws, and constitute, without any doubt, an unauthorized payment.

In consequence, the claim is inadmissible, and equity, well understood, necessitates the declaring it so, as the undersigned respectfully asks the tribunal to do.

Caracas, 23d June, 1903.

(Signed)

ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Corinne B. de Garmendia, sole legatee of Carlos G. de Garmendia, deceased, claimant, <i>v.</i> THE REPUBLIC OF VENEZUELA.	} No. 3.
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DECISION AND AWARD.

The Commission awards to the claimant the sum of \$29,363.64 in United States gold.

Opinion by Bainbridge, Commissioner.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Corinne B. de Garmendia, sole legatee of Carlos G. de Garmendia, deceased, claimant, <i>v.</i> THE REPUBLIC OF VENEZUELA.	} No. 3.
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BAINBRIDGE, *Commissioner*.

The United States of America, on behalf of Corinne B. de Garmendia, as sole legatee under the will of Carlos G. de Garmendia, deceased, presents a claim against the Government of Venezuela for the sum of \$111,274.63, said claim being based upon the following statement of facts:

First. That on July 7, 1877, Carlos G. de Garmendia, a naturalized citizen of the United States, made with the Government of Venezuela, through its minister of the interior, a contract to establish steam vessel communication between New York City and the ports of La Guayra and Puerto Cabello, the Government of Venezuela, in consideration of the advantages to accrue to the entire country from such communication, binding itself to aid the enterprise with a monthly subsidy of 4,000 Venezuelan dollars. The contract was to "remain in full force and power for the term of two years."

The enterprise commenced operations December 15, 1877, and from that date the Government of Venezuela paid punctually the monthly subsidy of 4,000 Venezuelan dollars until January 15, 1879. In March, 1879, the Government gave notice to De Garmendia's agents that it would no longer continue paying the subsidy, there being then due and unpaid one-half of the monthly subsidy for January and the whole of that for February. De Garmendia continued the steamship service until May, 1879, at which time it was discontinued on account of the nonpayment of the subsidy. For this breach of contract a claim is made for the unpaid subsidy from January 15 to December 15, 1879, in the sum of 44,000 Venezuelan dollars, with interest at 3 per cent per annum.

Second. That in 1874 one H. de Garmendia made a contract with the Government of Venezuela to establish a permanent factory for the manufacture of ice in the city of Caracas, with branches at La Guayra

and Puerto Cabello. In order to establish the depot, a frame house, with all the machinery and requirements of the enterprise, was imported from the United States into Venezuela. In 1879, on account of the stoppage of the payment of the subsidy to the steamship line operated by Carlos G. de Garmendia, and the consequent discontinuance of the steamers, the ice enterprise could no longer be carried on, and in payment of advances made by Carlos G. de Garmendia, the house and ice plant were conveyed to him by the said H. de Garmendia. In April, 1879, General Guzman Blanco ordered the destruction of the house containing the ice plant. That said house had been imported and placed in La Guayra at a cost of 10,000 Venezuelan dollars, and was at that time rented for the sum of 150 Venezuelan dollars per month. A claim is made for \$10,000 Venezuelan, the value of the house, with legal interest from the date of its destruction, and also for the deprivation of the rent.

In the month of December, 1889, de Garmendia presented his claim to the Venezuelan Government and urged its payment. It is insisted before this Commission that de Garmendia's claim was recognized and acknowledged by the Government of Venezuela in the following record in the ministry of the treasury:

[Translation.]

COMMITTEE OF EXAMINING ACKNOWLEDGMENT OF DEBTS,
Caracas, 27th February, 1890.

The claim of Mr. Carlos G. de Garmendia, amounting to four hundred and thirty-one thousand five hundred (431,500) bolivares, having been examined by this committee, the President of the Republic orders that forty thousand (40,000) bolivares be paid on account; let the corresponding order for payment be taken to the Sala de Centralizacion. The words "Perforate it" follows, altered to the words "pay it," without being removed; and file this record.

The President.

JOSÉ M. LARÉS.

The above-named sum of 40,000 bolivares was paid to de Garmendia, in acknowledgment of which he gave the following receipt:

CARACAS, February 26, 1891.

I have received from the Government of the United States of Venezuela the sum of forty thousand (40,000) bolivares, as follows:

Four thousand (4,000) bolivares in money, and thirty-six thousand (36,000) bolivares in titles of 1 per cent monthly, on account of two claims I have presented, and which have been accepted and recognized in this form:

Value of ice plant in La Guayra, destroyed and material thrown away, in April.....	Vs. 10,000
Interest to date for ten years and ten months at 3 per cent annual.....	3,708
For the rent of ten years at Vs. 1,800.....	18,000
Subsidy on the balance of contract for steamers between New York and Venezuela, 11 months, at Vs. 4,000.....	44,000
Interest at 3 per cent per year for 11 years and one month.....	15,059

Total Venezuelan dollars..... 90,767

Received on account ten thousand dollars (10,000), described as above.

(Signed) CARLOS G. DE GARMENDIA.

Between the lines the word "been."
Correct:

C. G. DE G.

The meaning and effect of the record above quoted is open to some doubt. Under date of July 3, 1891, de Garmendia made a request of the ministry of the treasury for a certified copy of this record. Whereupon the "director of finance" of the department of hacienda,

in compliance with the foregoing, states that the record to which the preceding representation of Señor Carlos G. de Garmendia refers, is to the following effect:

Carlos G. de Garmendia claims 431,500 bolivars as principal and interest for damages suffered under the contract which he had with the Government for a steamship line and an ice plant. As Señor Garmendia does not verify this claim except upon his statement, the junta believes the claim inadmissible. Continuing, there is a note which appears to be in the writing of Dr. Juan S. Rojas Paul, which states as follows: "Let there be paid on account of this claim 10,000 dollars in notes."

On the other hand, in a letter to Garmendia, dated August 21, 1893, José M. Lares, who signed the record in question as president of the board of inquiry and recognition of debts, says in explanation of the wording of said instrument:

In perforating or canceling the accounts that were paid that word was undoubtedly put upon yours without noticing that it had not been paid in full, but that part of the amount of your claim was carried on *account*, which indicates clearly that your claim was acknowledged by the President and that it still remained pending but for the balance.

For reasons hereinafter made apparent, the Commission is not disposed to determine the claim upon any technical construction of this disputed acknowledgment. Upon its merits the claim is clear enough. The subsidy contract was executed on the part of Venezuela by Dr. Laureano Villanueva, who is described in the instrument as "minister of state in the home office (of the federal executive of the United States of Venezuela) fully authorized by the national executive."

Article 9 of the contract provides as follows:

The Government of Venezuela, in consideration of the advantages which the official service and the entire country will have from this way of communication, binds itself to aid the enterprise with a monthly subsidy of four thousand (4,000) venezuelanos, which will be handed in Caracas to Messrs. Nevett & Co., the consignee of the steamers.

The steamship enterprise commenced operations on the 15th day of December, 1877. The Government of Venezuela paid the monthly subsidy until January 15, 1879. It then stopped payments, and in March following notified the agents of de Garmendia, Messrs. Nevett & Co., that it would pay them no longer.

Article 11 provides:

This contract will be in full force for the period of two years.

The contract was executed July 7, 1877. It expired by limitation, therefore, on July 7, 1879. From January 5, 1879, the contract had five months and twenty-two days to run. Its breach entitled de Garmendia to the amount of the subsidy for this unexpired term.

In every case of breach of contract the plaintiff's loss is measured by the benefit to him of having the contract performed; and this is therefore the measure of his damages. (Sedgwick on Damages, sec. 609.)

The amount which would have been received if the contract had been kept is the measure of damages if the contract is broken. (Alder v. Keighley, 15 M. & W., 117.)

On January 9, 1880, Messrs. Hellmund & Co., the agents of Mr. de Garmendia at La Guayra, were served with the following notice:

[Translation.]

CARACAS, January 9, 1880.

Messrs. G. HELLMUND & Co., *La Guayra*:

Under date of yesterday the citizen minister of hacienda says to this office what follows: The illustrious American having been informed that the frame house used as an ice depot in the port of La Guayra greatly prevents the employees of the custom-house from duly watching that port, he has thought it indispensable to destroy it, in order to leave that place open; and he has ordered me to address myself to you to please indicate the means conducive to the fulfilling of the indicated proposal, advice which I have the honor of participating to you as the guardians of said house, that you may order its evacuation as soon as possible, and to inform this office what day this will be carried out.

(Signed) P. ARNAL.

The ice house was, therefore, not destroyed until some time in January, 1880, and its destruction was deemed necessary by the Venezuelan authorities as an act of public utility. De Garmendia was entitled to compensation for the actual value of the property and interest thereon for the time payment was wrongfully delayed. But he was clearly not entitled also to the rent which forms so large an item of his claim, and which is included in the amount alleged to have been acknowledged. After the destruction of the ice house by the Venezuelan authorities, de Garmendia could have no claim for being kept out of the use of the property, but only one for the equivalent value of the property in money and interest thereon for the time he was, without fault of his own, kept out of the use of that sum. (Sedgwick, sec. 316.)

As indicated above, this claim originated in the years 1879 and 1880. Mr. de Garmendia, however, made no demand upon the Venezuelan Government for its adjustment until the month of December, 1889. Can Venezuela be justly charged with interest during this long interval? I think not. The delay in presenting the claim is not satisfactorily explained, and the Government was not in default until it at least had proper notice that Mr. de Garmendia was asserting his right to compensation.

The following payments have been made upon this claim: On February 6, 1891, the sum of \$10,000, as evidenced by Mr. de Garmendia's receipt of that date; on or about May 9, 1896, the sum of \$1,000; and on or about January 15, 1898, the sum of \$1,600 gold, the last two payments having been made to the claimant herein, as evidenced by her letter to Senator McComas.

In view of the foregoing, allowance will be made:

(1) For the unpaid balance of subsidy, the sum of 22,933.31 Venezuelan dollars.

(2) For the ice house at La Guayra, the sum of 10,000 Venezuelan dollars.

The principal sum of 32,933.31 Venezuelan dollars will bear interest at the rate of 3 per cent per annum from December 2, 1889, deducting the amounts paid. On this basis the balance due on December 31, 1903, the anticipated date of the final award by this Commission, is the sum of 30,538.19 Venezuelan dollars (venezolanos), equivalent to the sum of \$29,363.64 in gold coin of the United States.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of Corinne B. de Garmendia, sole legatee of Carlos G. de Garmendia, claimant, against the Republic of Venezuela, No. 3, the sum of twenty-nine thousand three hundred sixty-three and $\frac{64}{100}$ dollars (\$29,363.64) in United States gold coin is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,

Commissioner on the part of the United States of America.

J. DE J. PAÚL,

Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,

Secretary on the part of Venezuela.

RUDOLF ALOLGE,

Secretary on the part of the United States of America.

Delivered July 1, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the Coro and La Vela Railway Improve- ment Company of Venezuela, claimant,	} No. 4.
v.	
THE REPUBLIC OF VENEZUELA.	

BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of the Coro and La Vela Railway Improvement Company, amounting to 270,000 bolivares, with interest from the 9th of February, 1898.

The Coro and La Vela Railway Improvement Company is a corporation of the United States, organized under the laws of the State of New Jersey.

The claim is based upon an instrument in writing, the original and translation of which are submitted, liquidating at the sum of 270,000 bolivares the subsidy obligations of the Republic of Venezuela to the claimant. This liquidation obligation is properly certified to as a true copy from the records of the proper department of the Government of the Republic of Venezuela.

The claim can not be disputed. It is based upon a conceded obligation, proven by the public records of the Venezuelan Government.

An award should be made for the full sum of 270,000 bolivares (about \$54,000), with interest from February 9, 1898, that is to say, \$62,596.80. There can be no dispute as to the right of the claimant to interest upon this conceded contractual obligation.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the Coro and La Vela Railway and Im- provement Company, claimants,	} No. 4.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

DECISION AND AWARD.

The Commission awards to the claimants the sum of \$61,104.70 in United States gold.

Opinion by Doctor Paúl, Commissioner.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the Coro and La Vela Railway and Im- provement Company, claimants,	} No. 4.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

Doctor PAÚL, *Commissioner*:

The United States presents the claim of the Coro and La Vela Railway and Improvement Company, amounting to the sum of Bs. 270,000, with interest from the 9th day of February, 1898.

The Coro and La Vela Railway and Improvement Company is a corporation of the United States organized under the laws of the State of New Jersey, as is evidenced by documents presented before this Commission.

The claim is founded on the following facts, which appear to be proven:

According to the contract made on the 12th of December, 1892, between the minister of public works and Mr. Manases Capriles, ratified by Congress on the 20th of March, 1895, for the construction of a steam tramway between the port of La Vela and the city of Coro. The concessionair was granted the privilege of transferring the rights, conditions, and obligations of the said contract to any national or foreign corporation.

According with a decree dictated under date of September 22, 1896, by the minister of public works, authorized by the President of the Republic and the vote of the Federal Council, a clause was added to said contract granting to Manases Capriles, in the name of "The Coro and La Vela Railway and Improvement Company," a subsidy payable by the National Treasury of Bs. 20,000 for each kilometer of tramway constructed in accordance with article 5 of the laws on railway constructions. This resolution was approved by the Congress of the

Republic the 18th of May, 1897, and ordered to be executed the 24th of the same month.

In the liquidation which was made in compliance with an order of the minister of public works, dated the 9th of February, 1898, by an official of the said department, in view of the report presented, by the Engineer Rafael Núñez Caures, commissioned by the Government to take over the railway between La Vela and Coro, which was of 13½ kilometers properly constructed; that upon this basis the liquidation was made resulting in 13 kilometers and 300 meters of road at Bs. 20,000 per kilometer, or in all Bs. 270,000, in favor of the Coro and La Vela Railway and Improvement Company.

The signature of the official who authorizes this liquidation is authenticated by the chief recorder of the Federal District under date of February 18, 1898.

The agent of Venezuela has acknowledged before this Commission the validity of this claim and that no payment has been made to the claimants on account of said debt.

With reference to the interest demanded in this claim, it appears that the claimant company has not been guilty of laches or negligence in urging the amount due, having since the 9th day of February, 1898, through the Department of State of the United States, used its best endeavors to collect said claim.

In view of the foregoing, the claim of the Coro and La Vela Railroad and Improvement Company is accepted for the principal sum of Bs. 270,000, with interest, which, at the rate of 3 per cent per annum from the 9th day of February, 1898, to December 31, 1903, the latter being the anticipated date of the final award by this Commission, amounts to Bs. 47,744.44. On this basis, and figuring the exchange at 5.20 per dollar, the total amount of the award is the sum of \$61,104.70 in gold coin of the United States.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of the Coro and La Vela Railroad and Improvement Company, claimant, against the Republic of Venezuela, No. 4, the sum of sixty-one thousand one hundred four and ⅓% dollars (\$61,104.70) in United States gold coin is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAUL,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADSON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered June 26, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the Ames Foundries, claimants,	} No. 5.
v.	
THE REPUBLIC OF VENEZUELA.	

BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case a claim for damages for breach on the part of the Republic of Venezuela of a written contract with the claimant. The claimant is a corporation of the State of Massachusetts, and a citizen of the United States.

There can be in this case no dispute as to the evidence, which is documentary and of such a nature that it must necessarily be conceded. The questions presented are, first, as to the proper interpretation of the contract, and, second, as to the measure of damages for its breach.

The contract is evidenced by a letter offering to cast and finish four figures in bronze for the sum of \$4,000, \$500 of which has already been paid, the remaining \$3,500 to be paid—\$1,000 on completion of the first two figures, \$1,000 on the completion of the third and fourth, and the remaining \$1,500 on delivery free on board dock, New York.

If the proposition made by this letter had been accepted, there could be no doubt but that the position of the Venezuelan Government is correct, and it was not obligated to pay the balance due on the contract until the completion of the statues; but the telegram sent by the Venezuelan authorities in accepting this proposal, accepted it only subject to certain modification as to terms of payment, and as this modification was accepted by a telegram from the claimant, the agreement contained in these telegrams as to terms of the payment takes the place in the contract of the provisions in the letter.

The contract was, therefore, that the claimant should cast and finish four statues, the Republic of Venezuela to pay on account of the work \$500 each month to the full amount of \$3,500. Four such payments, amounting to \$2,000, were properly made. Thereupon, in October, 1899, the Republic of Venezuela defaulted in making the payment of \$500 due that month, and notified the Ames Foundries that it could not or would not make that payment.

This was a clear breach of the contract on the part of the Republic of Venezuela.

Upon this breach of the contract the claimant, the Ames Foundries, had a right to elect to go on with the work and complete the contract, and claim for the full contract price, or to regard the contract as broken, and claim for the damages for the breach.

The claim as presented to the State Department of the United States is made both for the balance due on the contract and for certain elements of damage arising from the breach. The United States of America does not think the claimants are entitled to this measure of relief, and in that spirit of equity and fairness with which it is intended claims shall be considered and determined by this Commission, it presents the claim of the Ames Foundries only to the following extent:

It appears that at the time of the breach three of the statues were completed and that work had been commenced to the extent of making the sand mold for the fourth. At this point work was stopped.

The claimant is therefore entitled to recover for the three statues completed, in the sum of \$3,000, it being the proportion of three-fourths of the contract. Of this sum \$2,500 has been paid; \$500 in the allowance made for a previous payment of the same kind, made to the predecessor of the claimant, and \$2,000 in cash, leaving a balance due on the contract price for these three statues of \$500.

Claimant is also entitled under the contract to the sum of \$146.25 on account of the increase in the price of copper. The claimant is also entitled to recover for any damage arising for work done on account of the fourth statue, which appears from the evidence consisted in making the sand mold at an expense of \$235, making a total of \$821.25 in these three items.

Claimant is also entitled, as a further element of damage, to profit it would have made if it had been permitted to go on and complete the fourth statue under the contract. The evidence in this respect shows that the profit would have been \$218.75, bringing the total claim of the Ames Foundries to the sum of \$1,100.

We submit that the equity of the situation requires an award in this case in the sum of \$1,100, with interest from March 2, 1901, at which time the claim was presented by the United States authorities to the Government of Venezuela—that is, to June 1, 1903, or \$1,174.01.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

GRAN HOTEL, June 27, 1903.

The Honorable the SECRETARY OF STATE,
Washington, D. C.

SIR: At the session of the United States and Venezuelan Claims Commission on the 23d instant the agent of Venezuela announced to the Commission that his Government would prefer to carry out the contract originally entered into with the Ames Foundries Company than to let the matter proceed before the Commission, and stated that his Government would make a written proposition to that effect. The Commission decided that in fairness to both parties it would be well to have this proposition submitted, and consequently rule that pending the rejection or acceptance of the proposition by the Government of the United States no prejudice should accrue to the Republic of Venezuela in relation to the claim under the rules. This refers, of course, to the time for an answer on behalf of Venezuela.

The Government of Venezuela, through its minister of public works, has presented to me the proposition, which I herewith inclose, for such action as the Department may deem proper.

The claim made by the United States on behalf of the Ames Foundries is for \$1,100 on the statement of the claimant dated May 5, 1903. You will notice that the proposition herewith inclosed contemplates the allowance of \$250 for the sand mold and \$1,500 for the completion of the contract. The original contract provided for a payment of \$3,500, to be paid \$1,000 on completion of the first two figures, \$1,000 on completion of the third and fourth, and the remaining \$1,500 on delivery free on board dock in New York. This contract was modified by the Government of Venezuela in the telegram which provided that

monthly payments of \$500 each should be made; \$2,000 had been paid on this contract when the breach occurred.

I respectfully call your attention to the fact that the proposition speaks of "dollars." It is not evidence whether this is to be a payment in gold or in fuertes, but it is to be presumed that payment in gold is intended. The proposition also provides that the payment shall not be made until the Ames Foundries have completed their work. Moreover, there is no provision for a deposit of the \$1,750 or any definite arrangement by which payment would be assured.

I respectfully request that the Department instruct me by cable as to the acceptance or rejection of the proposition.

I have the honor to be, sir,

Very respectfully, yours,

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

UNITED STATES OF VENEZUELA,
MINISTRY OF PUBLIC WORKS,
Caracas, June 27, 1903.

MR. ROBERT C. MORRIS,

*Agent for the United States before the Venezuelan-American
Mixed Commission, present.*

SIR: In order to settle the matter relating to the monument of Columbus concerning which the Ames Foundries Company has presented a claim, the Government is disposed to pay said gentlemen the sum of \$250 for the value of the mold which they claim to have lost, and \$1,500 as the balance of their contract. Both sums will be delivered to the Ames Foundries Company as soon as the consul of Venezuela in New York informs the Government that the monument has been completed in conformity with the contract.

I am, sir, with all consideration,

Your obedient servant,

R. CASTILLO CHAPELLÍN.

DEPARTMENT OF STATE,
Washington, July 14, 1903.

ROBERT C. MORRIS, Esq.,

Agent of the United States, Caracas, Venezuela.

SIR: I have to acknowledge the receipt of your letter of the 27th ultimo, in regard to the claim of the Ames Foundries.

A copy of your letter was sent to the claimants, with an inquiry as to what action they desired to take.

A copy of their reply is inclosed for your information and guidance.

Reference is also made to the Department's telegram of to-day's date.

I am, sir, your obedient servant,

ALVEY A. ADEE,
Second Assistant Secretary.

AMES FOUNDRIES,
Chicopee, Mass., July 10, 1903.

The honorable the SECRETARY OF STATE,
Washington, D. C.

SIR: We are pleased to acknowledge receipt of your communication of July 8, inclosing copy of letter received by your Department from Robert C. Morris, agent for the United States before the Venezuelan American Mixed Commission. Also inclosing translation of letter received by Agent Morris from the minister of public works of United States of Venezuela, to which we beg leave to reply as follows:

We judge from this communication that it is the wish of the Government of Venezuela that we finish the contract for the four bronze statues for the monument of Columbus for Caracas on its original lines. To this we are willing to agree, but we want the original lines of the contract clearly understood, which does not seem to be the case at present we think.

The original contract made by the writer of this letter with the consul-general in New York was, that we were to make these bronze figures for the sum of \$3,500. This contract price was based on the price of copper the day the contract was made, January 12, 1899, and it was specially agreed that should the price of copper advance between the above date and the time when the Venezuelan Government should accept our contract, and we were at liberty to go ahead and complete the same, then we should be allowed the difference between these prices. Of course when we take a contract at a set sum in order to protect ourselves we contract for the material.

The price of copper advanced \$4.87½ per hundred pounds, the bronzes to be made by us weighed 3,000 pounds, which at \$4.87½ per hundred amounts to \$146.25. This makes the contract as follows:

Amount originally agreed upon.....	\$3,500.00
Advance in price of copper, as explained.....	146.25
Lost labor on one statue as explained.....	235.00
	<hr/>
	3,881.25
Credit cash received.....	2,000.00
	<hr/>
Balance due us (and gold is understood).....	1,881.25

To which we think should be added interest.

We are perfectly willing and anxious to complete the contract, and if the Venezuelan Government will deposit the amount due us on completion of our part of the contract with some reputable party in this country where we can get at it when we have done our part, we will guarantee to have our part of the contract fully carried out in thirty days from date of our knowing that such deposit has been made, and what we understand to be our part of the contract is, that the four bronze figures for the Venezuelan Caracas monument are to be by us delivered f. o. b. New York, all charges paid, suitably boxed for sea shipment.

Yours, very truly,

AMES FOUNDRIES,
 J. C. BUCKLEY.

GRAN HOTEL, *August 22, 1903.*

The honorable the SECRETARY OF STATE.

SIR: In relation to the claim of the Ames Foundries, No. 5, I have the honor to inclose herewith the final proposition of the Government of Venezuela for the adjustment of this matter outside of the Commission. This letter substantially meets the proposition of the Ames Foundries except as to the item of interest.

I respectfully request that the Department of State notify the legation of the United States at Caracas as to the final decision of the Ames Foundries, with instructions to advise the United States-Venezuelan Claims Commission.

Respectfully, yours,

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

No. 3040.]

OFFICE OF THE MINISTRY OF
PUBLIC WORKS, VENEZUELA,
Caracas, August 18, 1903.

MR. ROBERT C. MORRIS,

*Agent for the United States in the
Venezuelan-American Mixed Commission, Present.*

SIR: I have taken into consideration the answer of Messrs. Ames Foundries to the proposition which, by the honorable intermediation of yourself, I addressed them in the name of the Government, for the completion of the monument to Columbus.

The Government agrees, in order to settle this matter once and for all, to pay Messrs. Ames Foundries the sum of one thousand eight hundred eighty-one dollars and twenty-five cents American gold (G. \$1,881.25) without interest, which they ask, for the delivery of the monument completed; and to this end the Government will order the Bank of Venezuela to deposit in New York said sum, with the object that it may be delivered to Messrs. Ames Foundries, upon these latter advising the consul of Venezuela in said city that they have completed the statues, in entire accord with the contract, and after having heard the judgment of a commission of artists named by mutual accord by the consul and Messrs. Ames Foundries, in order that they may examine and report concerning the merit of the works.

Although I believe that this proposition will entirely meet the wishes of Messrs. Ames Foundries, I beg of you to advise me of their acceptance, to the end that the necessary orders may be given with respect to the obligation of the Government.

With all consideration, I am, sir,

Your obedient servant,

R. CASTILLO CUPELLIN.

AMES FOUNDRIES,
Chicopee, Mass., September 9, 1903.

STATE DEPARTMENT, *Washington, D. C.*

GENTLEMEN: Yours of the 5th, with inclosures, at hand, and we accept the proposition of the Government of Venezuela as stated in theirs of August 8, a translation of which you sent us. We will at

once commence on the remaining figure, that there may be as little delay as possible. As this Government has had an allowance made them of some \$700 on this same work, and as we were obliged to borrow money because of their failure to do as agreed, we do not think they are entitled to be allowed this interest, but we feel that we must allow it notwithstanding we can not afford to lose this amount that we feel to be actually our due. Our only hopes are that they will not only see the justice of our claim when they come to write the check for us, but that they will consider that we have been more than fair, and when in want of further bronze work they will remember that we made the following pieces of statuary for their country, viz: Standing figures of General Urdenita-Columbus, General Bolivar, and the equestrian statue of Marshal Lucre. We thank your Department for your kind offices in this matter and beg to remain,

Very truly, yours,

AMES FOUNDRIES,
J. C. BUCKLEY, *Proprietor.*

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of The Ames Foundries Company, claimant,	} Claim No. 5.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

DECISION.

By the COMMISSION:

The Commission dismisses the claim without prejudice.

DECEMBER 9, 1903.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of The Ames Foundries Company, claimant,	} Claim No. 5.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

DECISION.

A settlement of the above-entitled claim having been effected between the parties pending its submission, the said claim is hereby, without prejudice, dismissed.

Delivered December 9, 1903.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

CARLOS F. GRISANTI,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

EDUARDO CALCAÑO SANAVRIA,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Emerich Heny, claimant, v. THE REPUBLIC OF VENEZUELA.	} No. 6.
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BRIEF ON BEHALF OF THE UNITED STATES.

I.

STATEMENT OF FACT.

In this case the United States presents the claim of Emerich Heny for forced loans and destruction of property during the revolutions of 1892 and 1899, amounting in the aggregate to \$29,925.11, and interest amounting to \$8,789.19.

Emerich Heny is a naturalized citizen of the United States who has, since the year 1874, resided and been engaged in business in Venezuela. In the year 1883 he married Bertha Benitz, one of the heirs of Carlos Benitz, which heirs were the owners of a sugar plantation near Caracas. Under a contract with the heirs, a certified copy of which from the records is in evidence, Mr. Heny took over the management of said plantation and conducted the same with his individual capital. He presents two claims against the Government of Venezuela. One for forced loans and property taken during the revolution of 1892. This claim was in 1893 presented as a claim on behalf of the heirs of Carlos Benitz to the Venezuelan Government and full and due proof made of the amount of the claim to the extent of \$27,617.91. The remaining portion of the total claim is the basis of a second claim and arises from the taking of forage and sugar cane during the revolution of 1899.

II.

The evidence shows that Mr. Heny is and has continued to be a citizen of the United States.

The evidence on this subject, as to which there can be no controversy, is that Mr. Heny was naturalized on October 15, 1872, by the superior court of the city of New York; that he went to Venezuela in 1874 as the local representative of several American houses, and that he has continued to act as such representative, and such is and has been the primary cause of his stay; that his relation to these American houses has continued as such down to the date of the claims. Letters and affidavits from the various American houses whose representative he is are in evidence supporting this position.

There can be no question that Mr. Heny was a citizen of the United States at the time the claims arose.

III.

The evidence clearly supports the amount claimed.

So far as concerns the forced loans and cattle and other property taken during the revolution of 1892, the memorial and exhibits attached

set forth the presentation of this case to the Venezuelan Government and the taking of amply sufficient testimony at that time to support the claims. Certified copies in Spanish and translations thereof of this testimony are presented.

As to the second claim for sugar cane taken during the revolution of 1899, the evidence consists of the sworn statement of Mr. Henry, both in the memorial and in his affidavit of July 25, 1901, and the affidavits of Nicanor Acosta and Pedro Regaledo Montes de Oca, verified before Mr. Russell, the secretary of the United States legation, on the 9th of March, 1901.

Under the rules of evidence governing such arbitration tribunals as this there can be no question as to the competency of this testimony by letters and affidavits. See the opinion of Judge J. C. Bancroft Davis, 15 Court of Claims Reports, 546, as follows:

In the means by which justice is to be attained, the court is freed from the technical rules of evidence imposed by the common law, and is permitted to ascertain truth by any method which produces *moral conviction*. This proposition is self-evident. The restraints which municipal law imposes upon the taking and use of evidence vary greatly in different countries. In its broadest sense the word evidence includes all means by which any alleged fact, the truth of which is submitted to examination, may be established or disproved. (1 Green. Ev., sec. 1.) If it were necessary to justify the granting of such wide powers to the commissioners, it would be easy to do so. International tribunals always exercise great latitude in such matters (Meade's case, 2 C. Cls. R., 271) and give to affidavits, and sometimes even to unverified statements, the force of depositions.

Article II of the protocol under which this Commission was formed, moreover, expressly extends the consideration of the Commissioners to any documents or statements which may be presented to them by or on behalf of the respective Governments.

There can also be no question as to the sufficiency of this evidence to establish the amount of the claims.

IV.

The evidence clearly warrants the finding that Mr. Emerich Henry is the owner of these claims.

The evidence is that, upon his marriage in 1883, Mr. Henry took over the management of this plantation and thereafter conducted the same and carried on the business with his own capital. On the 1st day of May, 1892, a written assignment was made to him by all the heirs of Carlos Benitz, conveying to him in substance the usufruct of this plantation in consideration of his advances of capital and conduct of the business. This assignment was prior to the happening of either of the wrongs complained of. These facts, taken together, clearly show that Mr. Henry was operating and conducting this plantation and that he is the person injured by the wrongs complained of. The only basis of a contrary contention could be that the claim which was made in 1893 against the Venezuelan Government was made by him nominally as agent of the heirs of Carlos Benitz, as though they were the beneficial parties. Mr. Henry swears in his memorial that this was a mistake in the fact, and the written assignment of May 1, 1892, from the heirs of Carlos Benitz to him amply supports his position in this regard.

V.

There can be no question as to the liability of the Venezuelan Government upon this claim.

The principle is well settled that if a revolution subsequently becomes the government of the country, it will be regarded as a de facto government even prior to the time it succeeds in firmly establishing itself, at least so far as to make the government liable for contracts properly made or acts done by such de facto government. On the other hand, there is the equal liability on the part of the government for similar acts on the part of the government troops who still had authority to and were acting as the representatives of the established government. The authorities are equally well settled as to the liability of the government for forced loans or for property taken for the use of troops under circumstances such as those in this case.

In support of this proposition it is only necessary to refer to the cases which have arisen before different arbitral commissions collated by Moore, fourth volume of his work on International Arbitrations. As to forced loans, the cases are collated at pages 3409 to 3422. They show a uniform holding of liability on the part of the government for such forced loans save and except in the single case of imposition of a general forced loan upon all the citizens of a community. Such is not the fact in this case, as these were especial and direct forced loans from Mr. Heny, evidenced by receipts given.

As to the liability for the appropriation of property, the taking of cattle, or other injury to property during the conduct of a war, the authorities are collated at pages 3714 et seq., fourth volume of Moore's work, above referred to.

While a government may not be liable for the destruction of property which is destroyed as a necessary incident to war, the cases uniformly hold that it is liable for property taken voluntarily for the purpose of carrying on the war, whether for the general purposes of the war or for the support of troops, or even for the preventing of such supplies falling into the hands of the enemy. In this case the property appears to have been taken for the use of the troops by proper authorities. It was taken voluntarily, and it is not a case of property incidentally or accidentally destroyed during the progress of the war. This is so even with regard to the damage alleged in the second claim of Mr. Heny. Whereas there may have been some destruction of property and injury to his plantation during the progress of the battle that took place upon one part of it, it is clear from the evidence that the claim which was made is limited to the value of the sugar cane and other property taken for the sustenance of the troops during the time of their encampment prior to and after the battle, and not for any such property destroyed as an incident of the battle nor even as an incident to the encampment.

There can be no question, under the uniform line of decisions in such cases, that the Venezuelan Government is liable to Mr. Heny for the full amount of his claim.

VI.

The correctness of the claim of Mr. Emerich Heny and its liability therefor have been practically conceded by the Venezuelan Government.

This claim was the subject of diplomatic correspondence between the Government of the United States of America and that of the Republic of Venezuela in which the claim in its present condition with all documentary matter was submitted to the Government of Venezuela for a settlement. The reply of the Government of Venezuela to the representative of the Government of the United States can be regarded in this case, as in all similar ones, as equivalent to an answer on behalf of the Venezuelan Government and as *an admission of all the facts which are not expressly controverted.*

For answer in this case the Venezuelan Government simply refers to the position taken by it in the case of Ford Dix, in which case its position was that the claim should have been and should be submitted to its local tribunals for adjudication. The fact remains that the Venezuelan Government does not in this case dispute the truth of any of the facts set forth, the correctness of the amount claimed, nor its own liability therefor.

VII.

The position of the Venezuelan Government that this claim should have been submitted to its local tribunals for adjudication is not well founded.

Without in any way controverting the truth of any of the statements on which this claim is based or the correctness of the amount claimed or its own liability therefor, the authorities of the Republic of Venezuela contended merely that the Government of the United States ought not to intervene because the claimant had a proper and sufficient remedy in the local tribunals of that country. This position of the Republic of Venezuela was wholly untenable. The cases in which one State has the right to intervene to protect the rights of its citizens resident or temporarily within the domain of another State fall into two general classes. The first, cases in which the citizens has received positive maltreatment at the hands of the foreign government or those for whom it is directly responsible. The second, cases in which the citizen has been denied ordinary justice in the foreign country. In this latter class a distinction again is to be made between cases of a denial of justice in actions against the foreign government as such and those between individuals to such an extent that the foreign government may be held responsible.

The right of intervention in the first class of cases is direct and immediate and there is no necessity for resort to local tribunals as a condition precedent to an application to the home government.

The wrongs here complained of, arising from the obtaining of forced loans and the taking of property by the troops of the Government and the revolutionary party that has since established itself as the Government, makes the case clearly one of this first class.

Even if we were to concede that the claims were of such a character as ought to be first submitted before a local tribunal for adjudication, yet the Republic of Venezuela is not in a position to call for such sub-

mission. The decree of 1873, establishing a high federal court before which all claims against the Government must be adjudicated contains provisions which make the latter procedure practically a denial of justice. It is provided in substance in that decree that should it clearly appear that any claimant has exaggerated the injuries suffered by him, he shall lose whatever right he may have had and incur a fine of from 500 to 3,000 venezolanos (\$500 to \$3,000) or imprisonment from six to twenty-four months. The letter of the Venezuelan authorities in citing the rendition of this decree preceded with the statement that in 1869, a report was made to the Venezuelan Congress that the revenues of the country were being consumed in the payment of foreign claims and calling upon Congress for some remedy in the situation. This connection makes it, upon their own statement, manifest that this decree was devised in its present form as an express means of preventing foreigners from instituting or prosecuting claims against the Venezuelan Government. This was its origin and spirit and such has been its manifest effect.

It would be useless to discuss this situation further. It is clear that a court so established and the right of appeal to which it was coupled with such restrictions can not be compared either to the Court of Claims of the United States, or to any other judicial tribunal to which it has been held that claims of foreigners as well as domestic citizens should first be submitted.

The views above expressed are clearly supported by the authorities. See Phillimore's International Law, Vol. II, pages 3 et seq., and especially the following language on page 12:

VII. It may indeed happen, as the same author most justly observes, that the debtor State may adopt measures of domestic finance, so fraudulent and iniquitous, so evidently repugnant to the first principles of justice, with so manifest an intention of defeating the claims of its creditors as to authorize the Government of the creditor in having recourse to acts of retaliation, reprisals, or open war—such measures, for instance, as the *permanent* depreciation of coin or paper money, or the absolute repudiation of debts contracted on the public faith of the country.

The instances above quoted are matters of finance. The same principle applies absolutely to an attempt to accomplish the same thing by a provision such as was made by Venezuela in this case making recourse to its tribunals subject to risk both of financial loss and personal imprisonment.

VIII.

The position of the Venezuelan Government that this claim should have been submitted to its local tribunals, even if well founded, has been expressly waived by the signing of the protocol under which this Commission is appointed.

Whether the position of Venezuela as outlined in the correspondence of its diplomatic representatives with those of the United States is or is not well founded, it has never been recognized by the United States, but has long been a subject of controversy between the two countries and has been one of the essential causes for nonsettlement of many of the controversies which are to be submitted to this Commission. It was largely, if not entirely, because of disagreement with respect to this position of Venezuela that the two countries were unable to amicably agree upon the settlement of this and other claims.

And it was because of this disagreement on this question to a large extent that there arose the necessity of this Commission.

The language of the protocol itself can bear no other interpretation. Under its provisions—

All claims owned by citizens of the United States of America against the Republic of Venezuela and which have not been settled * * * and which shall have been presented to the Commission hereinafter named * * * shall be examined and decided by a Mixed Commission. * * * The Commissioners or, in case of their disagreement, the umpire shall decide all claims upon a basis of absolute equity without regard to objections of a technical nature or of the provisions of local legislation.

It would have been difficult to have chosen language more directly applying to this position which has been taken by the Republic of Venezuela in the past. The express exclusion from the consideration of the Commissioners of any local legislation excludes the decree of 1873 as well as any other local enactments, for by the word local we are to understand Venezuelan law or United States law, as the case may be, as being local to each of those countries in distinction from those principles of natural law, which are alone applicable as between two or more countries.

It has moreover been expressly and repeatedly held that the reaching of an agreement for arbitration or the appointment of a commission under circumstances such as this, is an express waiver of any provisions of law whereby the claims should first have been submitted to local tribunals.

In the controversies which arose between the United States and Great Britain under the treaty of November 19, 1794, commonly called the Jay treaty, it was and had been contended by Great Britain that the claim of citizens of the United States could and should be first submitted to the determination of the local tribunals of England. But it was held by the commissioners that the making of the treaty within certain lines defined by it as to the class of cases which should be taken up and substituted the commissioners as a court absolutely in place of any such local tribunals and was a waiver of any claim that these cases should first have been submitted to such local tribunals for adjudication. (3d Moore's International Arbitration, pp. 3073, 3101 to 3115, 3161 to 3206.) See also the opinion of William R. Day, as an arbitrator appointed under the protocol between the United States and the Republic of Haiti, in which Judge Day uses the following language with reference to a similar claim that the cases should have been first submitted to adjudication of local tribunals:

The arbitrator in this case, however, is given jurisdiction of the differences between the two Governments by the terms of the arbitral agreement, giving him jurisdiction and authority to determine certain differences. (For. Rels. 1901, p. 275.)

The protocol in this case having given this Commission power to hear and determine all claims owned by citizens of the United States against the Republic of Venezuela, its power is unlimited to hear and determine all such claims whether they might or might not have been otherwise a proper subject for adjudication by some local tribunal of the Republic of Venezuela.

The contention of the Republic of Venezuela in this respect has therefore been abandoned and the submission of all controversies to this Commission conceded by its executing the protocol under which this Commission is appointed.

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The contention of the Republic of Venezuela in this respect has therefore been abandoned and the submission of all controversies to this Commission conceded by its executing the protocol under which this Commission is appointed.

IX.

An award should be made in this case for the full amount claimed, to wit, \$29,925.11, and interest, \$8,789.19.

The facts in this case being, as we have seen, clearly established, and being, in fact, practically undisputed, and the only cause assigned by the Republic of Venezuela for its unwillingness hitherto to recognize and pay the same, to wit, that the claim should first be adjudicated by its local court, having been waived and abandoned by its consent to the establishment of this Commission, it is clear that the Republic of Venezuela can no longer advance any pretense why Mr. Emerich Heny should not recover the amount which he now claims.

An award of that amount should be made.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

Claim No. 6, *E. Heny*.

ANSWER.

To the honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the United States of Venezuela, has investigated the papers in the claim presented by the American citizen, Emerich Heny, and as a result of his study respectfully reports to this tribunal:

The claim in question arises out of two different matters. The first consists in money and goods supplied during the year 1892 to one of the division chiefs of the revolution called "Legalista," which afterwards became the constituted government, and in damages caused by the forces belonging to the said revolution, the total value of which was acknowledged to the claimant by the said chief of division. The second consists only in damages to a plantation of which the claimant is said to be the owner and calculated by him in the sum of eight thousand bolivars (Bs. 8,000).

Before proceeding to consider the basis of the claim, the undersigned makes the following preliminary observation: The claim, as it has

been presented, falls outside of the jurisdiction of the Commission, according to the terms of the protocol signed in Washington. In fact, according to the admission of the claimant himself, he is only a copartner with the heirs of Benitz, whose interests he was managing at the date of the acts upon which the claim is founded, and the share of the claim which might belong to him has not been ascertained nor properly proved, since with reference to this point there exists no other proof than his bare affirmation, too interested to be of any weight in justice; more so since it is contradicted by the facts themselves.

The claim was presented to the ministry of hacienda and public credit in March, 1893, in the name of the Benitz heirs, Venezuelans by origin, and was the object of diplomatic correspondence between the Venezuelan foreign office and the legation of the United States—certainly for that portion which might belong to Mr. Heny.

In said correspondence the foreign office limited itself to sustaining the principle of territorial jurisdiction, to take cognizance of and decide the claim without entering into a discussion of the facts upon which it is founded, since this sort of controversy is not within the scope of its functions. It can not be sustained, therefore, as the honorable agent of the United States claims, that this enforced omission involves a tacit admission of the correctness of the amount claimed and of the facts alleged. On the other hand, the Department of State of the United States has given concerning this concrete case an opinion based upon the general rules of international law, the undeniable justice and authority of which, united with the consideration of the source from which it comes, must strongly influence the mind of the tribunal in arriving at its judgment. I refer to the letter sent under date of April 29, 1901, by the Hon. David J. Hill to Mr. Carl Hansman, the attorney of the claimant. In said document, the original of which is found among the papers, the high American official says:

Inasmuch as the documentary evidence submitted by the claimant in support of his first claim described the claim, which was presented first to the ministry of the treasury and public credit as being made by the "heirs of Señor Carlos Benitz," the claimant should produce, by the production of the contract with the heirs under which he managed the plantation, or other evidence, that the property taken and destroyed belonged to him. An assignment by the heirs to him, at a date subsequent to the time when the claim arose, of their interest in the property taken, affords no basis upon which to request the intervention of the United States in behalf of the claim.

In the second claim, it appears that a part of the sugar cane, for the destruction of which the claim is made, was destroyed by the passage and repassage of the troops during the combat between the Government troops and the revolutionary forces. This property was located in the track of war, and its destruction in the manner indicated appears to have been an incident of the military operations. Under the general principles of international law, the Venezuelan Government would not be liable for the property so destroyed.

The claimant has attempted to supply the proof demanded by the document which has just been cited, and, in fact, has produced a grant in his favor of all the rights and actions which might belong to the Benitz heirs, executed by them. Said document appears to have a date prior to the facts upon which the claim is founded, but evidently it was executed at a later date, with the preconceived intention of supporting the claim, as the circumstance of its not having been registered at the proper time, in conformity with the Venezuelan law and with the principle of the common law, "*locus regit actum*," would lead us to believe. It is also inconceivable how this formality could have been omitted, since there was question of a grant that affected third

parties, and consisted in the transfer of rights to real property for which record in the registry is an indispensable requisite in Venezuela. (Civil Code, Art. 1888.) At all events the document in question is wanting in value and has no other date with reference to third parties than its presentation to the legation of the United States, a date subsequent to the time when the acts out of which the claim arose are said to have been committed. It can therefore have no legal effect.

With reference to the second claim, the claimant, with the object of proving that the damages caused to the estate "La Fundacion" were not the necessary incidents of the operations of war, has presented testimony in the form of depositions which has no legal value, not only because the information was obtained eight years after the acts to which it related which are sought to be proved by it and before an authority incompetent to receive it, but also because the witnesses have given their testimony without the sanction of an oath and in open contradiction to the facts set up by the claimant in the memorial addressed to the Government of the United States.

The preceding considerations clearly show that the present claim does not belong entirely to an American citizen and can not, therefore, be submitted to this Commission, and that the facts upon which it is supposed to be based, falling short of the criterion which international law establishes in similar cases, can not impose responsibility upon the Government of Venezuela.

Caracas, 6th of July, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Emerich Heny, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 6.
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REPLICATION ON BEHALF OF THE UNITED STATES.

In the answer of Venezuela in the above-entitled claim great stress is laid by the honorable agent of Venezuela upon the fact that the agreement entered into between the claimant and the heirs of Carlos Benitz was not registered, and it is contended, in consequence that the document in question is wanting in value and can have no legal effect. This contention is based upon the ground that article 1888 of the Civil Code of Venezuela requires that all instruments relating to real estate must be recorded. It is also asserted that third parties were affected by this document, but who they were is not set forth.

I.

In this case there are but two parties concerned, namely, the heirs of Carlos Benitz on the one part and the claimant on the other part, and if the claimant was content not to register the document and trusted the grantors, relying upon their honesty and his close family ties to them, it was his affair and the transaction was of no moment to anyone else. The requirement of registration is merely for the purpose of

giving notice to third parties who may be interested or become interested. No question as to any possible right of a third party or of Venezuela in the real property affected by the document arises in this claim, and consequently it is a matter of indifference whether the instrument was recorded or not. If Venezuela had any rights in this property, or if in any wise a question of title was involved, it might be that the contention would have some sort of a basis, but as the facts stand it is utterly lacking in force. The claim arises out of acts committed by the Venezuelan Government by which the claimant personally suffered damage in his right to the use of the estate, to his profits and to his individual capital.

II.

The honorable agent of Venezuela states in his answer that—

Said document appears to have a date prior to the facts upon which the claim is founded; but evidently it was executed at a later date with the preconceived intention of supporting the claim. * * *

We can not allow this statement to pass without comment. It is a serious charge to make in the absence of supporting proof. No proof whatever is presented to sustain the statement, which is merely a vague supposition. It is not to be supposed that proofs presented to this high Commission are manufactured evidence. Suffice it then to say that the document in question has been presented by the Government of the United States on behalf of the claimant as a part of the evidence submitted by him in support of this claim, and as such it is entitled to great weight and to the highest respect.

The original of this instrument between the heirs of Carlos Benitz and the claimant is herewith submitted to the Commission for its inspection.

III.

Referring to the quotation in the answer of Venezuela from the letter of Hon. David J. Hill to Carl A. Hansman, esq., April 29, 1901, it appears that Mr. Hansman replied to this letter on June 12, 1901, and in response thereto, by letter of June 17, 1901, Mr. Hill stated that it would be desirable to show by affidavits of the claimant and others cognizant of the facts that the destruction of the property referred to in Mr. Heny's second claim was not incident to the military operations, but that the property was confiscated by the Government forces for the use of the army. Such proofs as were desired were supplied by the claimant to the Department of State at Washington, and the United States has, therefore, presented this claim, considering the evidence to be full and sufficient, and believing the claim to be a just one.

IV.

The honorable agent of Venezuela states in reference to the second claim that the claimant—

has presented testimony in the form of depositions which has no legal value, not only because the information was obtained eight years after the acts to which it related, which are sought to be proved by it, but also because the witnesses have given their testimony without the sanction of an oath and in open contradiction to the facts set up by the claimant in his memorial.

We respectfully call the attention of the Commission to the joint declaration of Nicanor Acosta, Pedro Regaledo Montes de Oca, Julio Reveran, and R. S. Schaici, at Las Tijerías, March 24, 1900, certified by Rufo Galindo, the civil and military authority of that town, showing that the contents of the declaration on the back of the instrument are true in all their parts, and that the signers are residents of Las Tijerías. The certificate of Galindo was in turn certified to by José Jesús Reyes Gordon, civil and military chief of the community of El Consejo, and this certificate was certified to by Manuel Rasquin, civil chief of the district of Ricuarte, whose certificate was then certified to by José del Cn. Villesana, principal registrar of the State of Aragua whose certificate was then certified to by José Maria Garcia Gomez, provincial president of the State of Aragua. This declaration was made on March 24, 1900, *within four months* from the time of the acts complained of. Moreover, Nicanor Acosta and Pedro Regaledo Montes de Oca made a sworn statement of the facts in the case, which was certified to in March, 1901, by the proper authorities. The evidence could not be stronger and is in full accord with the claim.

V.

From the proofs submitted it is clear that the claim belongs entirely to Mr. Heny, who is a citizen of the United States, and that, under Article I of the protocol, he is entitled to have this claim decided by this Commission. An award should be made for the full amount claimed.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

EMERICH HENY }
v. } Claim No. 6.
VENEZUELA. }

REJOINDER OF VENEZUELA.

Honorable members of the American-Venezuelan Mixed Claims Commission:

The undersigned, agent of the United States of Venezuela, has perused the replication of the honorable agent of the United States in this matter, and respectfully sets forth:

I.

The argument, from a standpoint of law, made by the undersigned for the rejection of the weight as evidence which the assignment of the Benitz heirs to the claimant might have, consists in the fact that such document has no certain date. The undersigned, commenting upon this point, said that it was not explained how a transfer which must necessarily have interested third parties—since it treated of the transfer not only of rights but also of obligations—had not been executed before the public registrar. The third parties in this case are the creditors of the Benitz estate.

II.

The opinion which the undersigned gave in answering the claim, expressing the belief that the assignment was of a later date than the facts out of which the demand arises, and was executed for the sole purpose of sustaining it, can not be called a guess; such opinion was the natural and logical consequence of the fault under which the instrument labors. Such opinion has been strengthened by the evidence furnished by public documents, which the undersigned presents for the consideration of the tribunal, marked with the letters "A" and "B." Said documents contain, the first, the deed of sale by which the predecessors in interest of the Benitz heirs acquired the hacienda called "La Fundación," bears date March 11, 1878; and the second, the deed of which Emerich Heny, as attorney of Juan Remsted, made for principal of the said hacienda to the Benitz heirs, bears date November 28, 1898, which is the date of its authentication before the judge of first instance of the Federal District. It is evident, therefore, from these documents (1) that the hacienda "La Fundación" has never been the property of the claimant; (2) that with regard to the date of the transactions which give rise to the second claim, the sole proprietor of said hacienda was Mr. Juan Remsted, who has not been proved to be an American citizen.

Therefore the tribunal must decide between the weight as evidence of the documents furnished and that which the personal and interested affirmation of the claimant may have.

III.

The undersigned contested the legal value of the deposition taken to support the second claim on account of its having been made before an incompetent authority, in accordance with what is provided in section 2, Title XXII, part 2, of the Code of Civil Procedure—proofs of fact only must be made before a judicial authority; the civil chiefs are not functionaries of the judicial order, and, since the claimant ought to have complied with the principal "locus regit actum" his proof is not adequate.

Caracas, July 15, 1903.

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Emerich Heny, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 6.
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BAINBRIDGE, *Commissioner.*

Emerich Heny, the claimant herein, was born in Germany in 1846 and emigrated to the United States in 1867, where he was naturalized as a citizen thereof in the superior court of the city of New York on October 15, 1872. Two years later he removed to Venezuela, where he has since resided. In 1883 he was married to Bertha Benitz, of Caracas, one of the children and heirs of Carlos Benitz, deceased.

The Benitz heirs were the owners of an estate situated at Las Tejerias, near Caracas, said estate being known as "La Fundación." Upon his marriage Heny undertook the management and cultivation of the estate, and he also rented an adjoining plantation known as "El Palmar," which he cultivated on his own account.

In the months of September and October, 1892, a revolution called the "Legalista" was in progress in Venezuela, which ultimately proved successful, resulting in the overthrow of the then existing government. During this revolution the contending forces passed over "La Fundación" and destroyed the crops, seized the horses, cattle, and other property, and exacted from the owners of the estate loans of money and supplies for the troops, inflicting a loss, as claimed, aggregating 143,096 bolivares, equivalent to \$27,617.91 in United States gold.

On March 7, 1893, Gen. Antonio Fernandez, who was "chief of the Army of the Center during the Legalista revolution," signed a document setting forth "the pro rata supplies furnished the Army of the Revolution by the plantation called 'La Fundación' situated at Las Tejerias, the property of the heirs of Señor C. Benitz, whose general agent and representative is Señor E. Heny," enumerating said supplies and giving the total value thereof as 143,096 bolivares.

On March 15, 1893, Mr. Heny addressed to the minister of the treasury and public credit the following communication:

E. Heny, a merchant and resident of this city, as representative and authorized agent of the heirs of Señor C. Benitz, respectfully represents to you:

The said heirs are creditors of the Government for the sum of 143,098 bolivars for supplies furnished to the revolution in the district of Ricaurte, State of Miranda, and as shown by the annexed proofs on stamped paper, certified by Gen. Antonio Fernandez, which I present to you by virtue of the Executive resolution of November 25th, last.

Caracas, March 15, 1893.

(Signed) E. HENY.

An offer was made by the Government to pay 40 per cent of the amount of the claim in the form of a special revolutionary note issue, which, it is alleged, was worth only 15 per cent of its par value; so that the offer was, in effect, to pay 6 per cent of the amount claimed. The offer was rejected and the claim was withdrawn from the ministry of the treasury and public credit.

During the months of November and December, 1899, another revolution was going on in Venezuela, in which the military forces, both of the Government and the revolutionists, passed over "La Fundación" and cut down and seized for forage a large quantity of growing sugar cane. A battle occurred in the vicinity on November 29, 1899, and the sugar cane was in part destroyed by the passage and repassage of the troops. The total value of the sugar cane taken or destroyed in this manner and at this time was the sum of 12,000 bolivares.

The United States of America, on behalf of Emerich Heny, now presents to this Commission a claim, inclusive of the two claims designated above, amounting in the aggregate, with interest, to \$38,714.30.

Article 1 of the protocol constituting the Commission confers jurisdiction over "all claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the Commission hereinafter named by the Department of State of the United States or its legation at Caracas."

It is evident from the record that Heny never became the real owner of "La Fundacion." Subsequent to his marriage he assumed the management of the estate and became in all matters pertaining to it the general agent and representative of the Benitz heirs. It seems at that time the plantation was run down and out of repair. Heny says:

Upon my marriage I entered into a contract with the said heirs by which I undertook the management and cultivation of the said plantation on my own account and with my individual capital. From that time until 1892, when the events hereinafter related occurred, I invested in addition to my labor and services the sum of \$12,606.80 of my own money in improving and developing said plantation.

An instrument is put in evidence bearing date May 1, 1892, which reads as follows:

[Translation.]

We, Emilia B. de Benitz, a widow, Matilda Benitz, Adolf Benitz, Emilia Benitz, Gustave Benitz, unmarried, residing in this city, of more than twenty-one years of age, and sole heirs, conjointly with Bertha Benitz de Heny, wife of E. Heny, of Mr. Carlos Benitz, declare that, owing as we do Mr. E. Heny the sum of twelve thousand six hundred six pesos sencillos and eighty centimals, besides other sums that we owe to sundry other creditors of our estate "La Fundacion," to the amount of twenty-six thousand eight hundred thirty-three pesos and thirty-three centimals, for money supplied by said Heny for the improvement, maintenance, and cultivation of our sugar-cane estate called "La Fundacion," situate at Las Tejerias, jurisdiction of the municipality of Consejo, district of Ricaurte of the State of Miranda, the boundaries of which are in conformity with the title of property which, as heirs to our principal, Mr. Carlos Benitz, is in our possession and is registered under number 38 and 41 of the first and second protocols of the first quarter, under date of March 11, 1878, we hereby assign, cede, and transfer in favor of the said Mr. E. Heny all of the rights and actions that correspond to us or may to us correspond in future in said property "La Fundacion," as a guarantee to said Heny for any loss he may sustain in the capital he has invested in said estate, Heny remaining bound to answer for the other debts incurred by said estate, which he is to pay off when we make as we now make a formal cession in his favor of our credits in said estate. To the accomplishment of what is herein agreed to we bind our present and future property, in accordance with the law. I, E. Heny, of over twenty-one years of age, wedded to Bertha Benitz, residing in this city, do accept the above transfer and bind myself to carry out my share of this agreement. Caracas, May 1st, 1892. (Signed) Emilia B. de Benitz, Matilda Benitz, Adolfe Benitz, Emilia Benitz, Gustavo Benitz, E. Heny.

This contract between the Benitz heirs and Heny is neither a mortgage nor a sale of the estate. Somewhat deficient in form, the contract is in substance that known to the civil law as an antichresis, whereby a creditor acquires the possession and right of reaping the fruits and other revenues of real property given him in pledge as security for a debt. The creditor does not become the proprietor of the immovables pledged, but he may take the profits of the estate, crediting annually the same to the interest and the surplus to the principal of the debt, and being bound to keep the estate in repair and pay the taxes. It is analogous to the *vadium vivum* of the early English law and to the Welsh mortgage, which has now gone entirely out of use in common-law countries. Under the civil law the antichresis gives the creditor, not the title to, but a possessory interest in, the real property pledged. (4 Kent's Com., 138n.; *Livingston v. Story*, 11 Pet., 351; Walton's Civil Law in Spanish-American, art. 1881.)

A pledge or pawn (*Pfandrecht*) in the modern Roman law, according to Bar's definition, is a real or possessory right to follow a thing in the hands of third parties, for the satisfaction of a personal claim.

* * * * *

A whole estate may be thus pledged and in such cases the pledge covers not only what is on the estate at the time, but what may afterwards be added to it, even though the parties have at the time no knowledge of such addition. (Wharton, Conflict of Laws, sec. 314, citing Savigny, VIII, sec. 368.)

By the common Roman law a person can hypothecate his entire estate as an aggregate, i. e., all things which he has in bonis at the particular time and those he will possess in future. (Ibid., sec. 320.)

We have here the measure and extent of Heny's individual interest. Up to May 1, 1892, he had advanced to the Benitz heirs out of his own capital the sum of 12,606.80 pesos. Clearly the purpose and intent of this contract was to secure Heny for the advances made and to be made by him on account of the estate. To provide this security, the heirs of Carlos Benitz *pledged* to Heny the estate of "La Fundacion" and its appurtenances. Thereafter Mr. Heny, though not the holder of the legal title to the estate, did have a real or possessory right therein, which entitled him to compensation against third parties who, by their wrongful acts, might impair his security, to the extent at least of his actual interests in the property.

Anyone having an interest in land is liable to suffer injury with respect to this right; and accordingly, if his right, however limited it may be, is injured, he may recover compensation equal to his individual loss. The general rule may be said to be that the extent of the injury to the plaintiff's proprietary right, whatever it may be, furnishes the measure of damages. (Sedgwick on Damages, sec. 69.)

In the contract with the heirs Mr. Heny agreed to pay the other debts of the estate, but there is in the record no allegation or proof that he did so. They can not be considered, therefore, as included in the advances made by Heny to the estate.

General Fernandez certifies that the pro rata supplies furnished to his army by the plantation called "La Fundacion" amounted in value to 143,098 bolivars. These supplies consisted of crops, horses, cattle, lumber, merchandise, tools, and money. All of this property as appurtenances of the estate was in Heny's possession under the contract with the Benitz heirs, constituting part of his security for the 12,606.80 pesos invested by him in the property. It represented "fruits and other revenues" of the estate which he had the right to apply to the satisfaction of his claim. The property taken or destroyed exceeded in value the amount of his lien. If the Government of Venezuela is liable for the taking and destruction of this property, Mr. Heny is entitled to an award for the amount equal to his individual loss. To this should be added as involved in the claim, compensation for the proportionate loss sustained by his wife, Bertha Benitz Heny, one of the Benitz heirs, who is by virtue of her marriage a citizen of the United States.

The "Legalista" revolution of September, 1892, ultimately proved successful in establishing itself as the de facto government of Venezuela. The same liability attaches for encroachment upon the rights of neutrals in the case of a successful revolutionary government, as in the case of any other de facto government.

The validity of its acts, both against the parent State and its citizens or subjects, depends entirely upon its ultimate success. If it fail to establish itself permanently all such acts perish with it. If it succeed, and become recognized, its acts, from the commencement of its existence, are upheld as those of an independent nation. (Williams v. Bruffy, 96 U. S., 176.)

The liability of a government for encroachment upon neutral property has been clearly stated in *Shrigley v. Chile*, decided by the United States and Chilean Commission of 1892, as follows:

Neutral property taken for the use or service of armies or functionaries thereunto authorized gives a right to the owner to demand compensation from the government exercising such authority.

This rule has been followed in the case of *Ford Dix*, decided by this Commission.

The certificate of General Fernández is sufficient evidence that the property taken from "La Fundación" was under the authorization of the military authorities for the use and service of the revolutionary army.

The learned counsel for Venezuela urges that the contract between Heny and the Benitz heirs is void because it consisted in the transfer of rights to real property for which record in the registry is an indispensable requisite in Venezuela. (Civil Code, art. 1888.) But this position is believed to be untenable. Certainly the contract was valid as between the parties, whether recorded or not. And whatever may be the requirement and effect of a registration law as effecting the rights of innocent third parties, it can have no possible bearing to excuse the acts of a mere trespasser or tort-feasor.

The foregoing renders unnecessary any discussion of the second claim. But it may be remarked that the evidence shows that at the time of its destruction the property lay in the track of actual war.

An award should be made in this case for the sum of \$10,085.40 (being the equivalent of 12,606.80 pesos) and the further sum of \$1,753.25 (the proportionate loss sustained by Bertha Benitz Heny), in all the sum of \$11,838.69, in United States gold, with interest thereon at 3 per cent per annum from March 15, 1893, the date of the presentation of the claim to the Venezuelan Government, to December 31, 1903, the anticipated date of the final award by this Commission.

In so far as any claim or claims of the heirs of Carlos Benitz other than Bertha Benitz Heny are involved herein, they should be dismissed for want of jurisdiction, without prejudice to their prosecution in a proper forum.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Emerich Heny, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 6.
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Doctor PAÚL, *Commissioner*.

The United States of America, on behalf of Emerich Heny, presents to this Commission a claim for the sum of \$38,714.30, interest inclusive.

E. Heny, claimant, was born in Germany in 1846, emigrated to the United States in 1867, was naturalized an American citizen in 1872, and two years later moved to Venezuela, where he has since resided. In 1883 he married in Caracas Miss Bertha Benitz, daughter and heir of Carlos Benitz, then deceased. The heirs of the latter acquired by

inheritance from their father a rural property situated in "*Las Tejerías*," and called "*La Fundación*." After his marriage Heny became manager of this estate.

The claim is based on the following grounds:

First. During the months of September and October, 1892, the so-called Legalista revolution, which afterwards became the Regular Government, destroyed the plantations of the estate "*La Fundación*," confiscated horses, cattle, and other valuable property, and obtained sums of money as loans, the total of these items amounting, as it is affirmed, to the sum of 143,098 bolivars. Gen. Antonio Fernández, on March 7, 1893, signed a document, in his character of "chief of the Army of the Center during the Legalista revolution," declaring that "the total sum of the advances made to the revolutionary army by the estate called '*La Fundación*,' property of Mr. Benitz heirs and managed by Mr. E. Heny, amounted to the sum of 143,098 bolivars." This document appears to be legally executed by its signer.

Second. During the months of November and December, 1899, forces of the revolution "*Restauradora*," then already constituted as government, passed and repassed over the estate "*La Fundación*," cutting large quantities of the sugar cane under cultivation for forage, a battle actually taking place upon the property causing damages to said plantation. The amount claimed on this account is 12,000 bolivars.

Third. The honorable agent of the United States presents as proof that this claim belongs to the American citizen, Mr. E. Heny, a private document executed by the widow and children of Carlos Benitz, his heirs, dated in Caracas on May 1, 1892, in which it appears that there being due to Mr. E. Heny the sum of 12,606.80 pesos venezolanos, and to other creditors of the same estate, "*La Fundación*," the sum of \$26,833, for advances made by said Heny for the improvement, maintenance, and cultivation of the said plantation, they assigned and transferred to E. Heny all rights and interests that corresponded or might thereafter correspond to them in the said estate, "*La Fundación*," as a guaranty against any loss that Heny might sustain of the capital invested by him in the estate; Heny being also bound to respond for all other claims against the estate, which he undertook to pay in consideration of the transfer made to him of all the rights and interests in the said property.

Fourth. E. Heny addressed, on March 15, 1893, the minister of finance and public credit, as follows:

E. Heny, merchant and resident of this city, *on behalf and as representative of the heirs of Mr. C. Benitz*, begs to state respectfully that said heirs are creditors of the Government for the sum of 143,098 bolivars for advances made to the revolution in the district of Ricarte, State of Miranda, as is proven by the annexed voucher, consisting of one folio, signed by Gen. Antonio Fernández, which I present to you in accordance with the executive resolution of 28th of November last.

When this claim was presented to the board of public credit it was admitted in favor of Benitz heirs for one-half of the total amount claimed, and the Government offered in payment bonds of "*deuda de la revolución*," which the claimants declined to accept for reason of its depreciated price in the market. Subsequently, E. Heny addressed the Department of State at Washington, on May 9, 1901, presenting in his own name and for his account two claims which had arisen as the results of the acts committed by the revolutionary forces in the estate "*La Fundación*" in 1892 and 1899, and other damages suffered.

The petitioner in that document styles himself owner of the plantation "La Fundación."

The honorable Acting Secretary of State, David J. Hill, in his note of April 29, 1901, addressed to Mr. Heny's attorney, Carlos A. Hansmann, in answer to the claim presented by said attorney against the Government of Venezuela for damages caused by the destruction, occupation, and confiscation of Heny's property by military forces of the Venezuelan Government and by revolutionary troops, determined and specified that Mr. Heny should produce the contract made with Benitz heirs, by virtue of which he was managing the plantation, or any other proof that the property taken and destroyed belonged to him. To comply with this requirement the claimant has presented to the Commission the private agreement executed on May 1, 1892, by the widow and children of Mr. Benitz, deceased.

The honorable agent for the Venezuelan Government objects to the efficacy of this contract or private document as to establishing the proof of ownership in favor of Heny of property rights in the estate "La Fundación" as to third parties, inasmuch as said document lacks official certification as to the exactness of the date and has not been authenticated and recorded in the public register's office of the district where the estate is situated in conformity with the law. In proof of this assertion the honorable agent has produced two deeds, marked "A" and "B," the first of which, dated March 8, 1878, refers to the purchase of the estate "La Fundación" by Carlos Benitz, and the second, dated November 28, 1898, in which it appears that Mr. E. Heny, acting as attorney for Juan Remsted, on July 2, 1896, by deed duly recorded in the city of La Victoria in the public register's office, bought, for said Remsted, from the widow and children of Mr. Benitz the plantation called "La Fundación" for the sum of 80,000 bolivars, with an agreement of resale for the same amount to Messrs. Benitz within a stipulated term. It also appears from the last-mentioned deed that the Benitz heirs, after having availed themselves of the privilege of repurchasing the estate "La Fundación" by paying to Remsted the sum of 80,000 bolivars, and thus having reacquired the ownership of said estate, the same heirs of Benitz, and among them Bertha Benitz, acting under the authorization of her husband, E. Heny, made a new sale to Mrs. Attagracia H. de Ortega Martínez of the same plantation, free from all incumbrances, for the sum of 36,000 bolivars, reserving to them the privilege of repurchasing within the term of one year, and Messrs. Benitz remaining as tenants of the plantation. This deed, signed by E. Heny as attorney for J. Remsted, is authenticated before the mercantile court of first instance of the Federal District on the 28th of November, 1898, and was recorded in the public register's office of the District of Ricaurte on December 2 of the same year.

It appears from the foregoing that the question of the rights that Mr. Heny alleges to have acquired in the real property "La Fundación," prior to the dates on which the acts committed by the Government and revolutionary forces took place, and which rights he claims as arising from the private contract between himself and Benitz heirs, is in itself a question which treats of the rights acquired in a real property situated within the territory of the Republic. All questions relating to real property are necessarily governed by the local law of the place where the property is situated; *lex loci reicitas (rei sitæ)*.

As everything relating to the tenure, title, and transfer of real property (immobilia) is regulated by local law, so also the proceedings in courts of justice relating to that species of property, such as the rules of evidence and of preemption, the forms of action and pleadings, must necessarily be governed by the same law.

Real property is considered as not depending altogether upon the will of private individuals, but as having certain qualities impressed upon it by the laws of that country where it is situated, and which qualities remain indelible, whatever the laws of another State, or the private dispositions of its citizens may provide to the contrary. That State, where this real property is situated, can not suffer its own laws in this respect to be changed by these dispositions without great confusion and prejudice to its own interest. Hence it follows as a general rule that the law of the place where real property is situated governs as the tenure, title, and the descent of such property. (Wheaton's Elements of I. L., pp. 127 and 187.)

The contract made between the heirs of Benitz and Heny, in May, 1892, is not a contract of sale, by which the dominion of the real estate is transferred in conformity with the laws that govern such contracts, because in order to be so considered required the explicit statement that the real estate was given in sale for a stated price, and, furthermore, the local law required that in order to be valid as to third parties the document must be recorded at the register's office of the district where the said real estate is situated. Neither is it a mortgage contract, because, although the word guarantee is employed, it lacked one of the two essential legal conditions that characterize the mortgage, and that is the publicity which is obtained according to the law by employing the essential formality of registering in the proper office of the place where the real estate is situated. From the terms of the said contract the only inference which might be drawn is that it was the intention of the parties to celebrate an antichresis, giving to the creditor the right of reaping the fruits of the estate delivered to him, with the obligation of annually crediting the value thereof against the interest, if any was due to him, and any remaining balance against the principal standing to his credit; but besides the terms, which characterize a contract of antichresis, being imperfectly defined in the said contract, because there is no stipulation that the creditor acquired the right to reap the fruits with the obligation of crediting the value thereof against the interest and principal due him, in order that this contract of antichresis might be valid against third parties it was necessary that the formality of registry should likewise be complied with, as being essential for its effectiveness.

The said document, such as it is, only established a subsidiary guarantee between the debtor and the creditor, which did not cancel Heny's credit against the Benitz heirs, neither transferred to Heny any actual right in the real estate belonging to said Benitz heirs, because that transfer to make it effective against third parties would have had to be made public and made in accordance with the law governing the tenure, the title, and the transfer of the real property in the place of its situation. The law in such cases demands, as an essential requisite for the transfer of rights in real estate to produce effect against third parties, the recording thereof in the office of the public register in the respective district.

The Benitz heirs, owners of the estate "La Fundacion," in 1892 became direct creditors of the Government of Venezuela by reason of the acts damaging said estate and committed by the forces of the "Revolution Legalista," and the said heirs, as regards their relations to the Venezuelan Government, being as they were the only owners of the estate called "La Fundacion" as per public title, duly recorded,

and it was in virtue of this ownership only that General Fernandez executed to the Benitz heirs an acknowledgment of their credit against the Government of Venezuela, and it was for the same reason that E. Heny presented to the minister of finances and public credit, as attorney of the Benitz heirs and on behalf of said heirs, owners of the estate "La Fundacion," against the said Government, the claim for the amount of this credit.

This opinion is confirmed by the remarkable circumstance that four years after the celebration of the private agreement between Benitz heirs and Heny the Benitz heirs appear on record as signing a deed of sale of the estate "La Fundacion" in favor of Mr. Juan Remsted, and the same Mr. Heny accepted the said sale as attorney for Remsted without making any reservation as to the rights which he had acquired in the income and value of the estate, as surety for the payment of his personal credit against the Benitz heirs. This acceptance of the transfer of the real estate to a third party given by Heny implies one of two conclusions—either Mr. Heny had been paid by the Benitz heirs on or before that date the amount personally due to him, or by such act he released his rights against the estate "La Fundacion" which the Benitz heirs had accorded him as a guarantee for any loss that he might incur because of his prior investments in the said estate. In either case all legal rights or privileges established by the private contract of 1892, in reference to the estate "La Fundacion," even considering said contract as an antichresis, became null and void and without effect whatsoever.

It appearing proven by the public deed presented by the honorable agent of Venezuela, dated November 28, 1898, that the estate "La Fundacion" was again sold to Mrs. A. H. de Ortega Martinez, by the same heirs of Benitz, as owners, this evidence destroys Heny's pretension to the payment of the damages caused to the real estate "La Fundacion" in 1899, which constituted the second part of his claim, because on that date the said estate did not belong to him.

The circumstance which is argued that the estate "La Fundacion" was cultivated and developed with Mr. Heny's money does not establish any juridical bonds between him and the Venezuelan Government, as relating to the damages caused to the property by Government or revolutionary troops, as such damages can only be claimed of the Venezuelan Government by such parties who by duly registered and authenticated titles appear as the legitimate owners of the damaged property. To admit as competent for recognition as a claimant before this Commission anyone who may advance money for the cultivation and development of estates or property belonging to Venezuelan citizens would be equivalent to bringing before this Commission all foreigners who make a business of advancing money to the owners of real property, either by private contracts or by virtue of contracts in which a mortgage on the property so benefited is given, a common practice between the foreign merchants established in this country and Venezuelan proprietors and agriculturists.

In consequence, my opinion is that this claim should be disallowed.

THE UNITED STATES OF AMERICA ON BEHALF of Emerich Heny, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 6.
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OPINION OF THE UMPIRE, DR. BARGE.

A difference of opinion arising between the Commissioners for the United States of America and the United States of Venezuela, this case was duly referred to the umpire.

The umpire having fully taken into consideration the protocol, documents, evidence, and arguments, and likewise all other communications made by the two parties, and having carefully and impartially examined the same, has arrived at the decision embodied in the present award.

As to the first claim of the claimant:

Whereas it is clearly proven that in the months of September and October, 1892, during the so-called "Legalista" revolution, at the hacienda "La Fundacion" the plantations of that estate were partially destroyed, horses, cattle, and other valuable property confiscated and sums of money obtained as loans by the troops of the revolutionary party for the use and service of the revolutionary army under the authorization of the military chiefs;

And whereas the revolution proved ultimately successful in establishing itself as the de facto government, so that the liability of the Venezuelan Government for these acts can not be denied;

And whereas Emerich Heny, who has proved himself a citizen of the United States of America, claims that the sum owed by the Venezuelan Government as restitution for the above-mentioned acts is due to him, and as proof of his rights in the above-mentioned damages, confiscated properties and loaned money, produces an instrument bearing date of May 1, 1892, and containing a contract between himself and the heirs of Carlos Benitz, who, according to the evidence produced before the Commission, were on the date of the above-stated facts the owners of the said estate "La Fundacion;"

Whereas, therefore, it has to be considered to what extent this contract gives the claimant any right to the claim in question.

Whereas this contract reads as follows:

[Translation.]

We, Emilia B. de Benitz, a widow, Matilda Benitz, Adolfe Benitz, Emilia Benitz, Gustavo Benitz, unmarried, residing in this city, of more than twenty-one years of age, and sole heirs, conjointly with Bertha Benitz de Heny, wife of E. Heny, of Mr. Carlos Benitz—declare that owing as we do to Mr. E. Heny, the sum of twelve thousand six hundred and six pesos sencillos and eighty centimals, besides other sums that we owe to sundry other creditors of our estate "La Fundacion," to the amount of twenty-six thousand eight hundred and thirty-three pesos and thirty-three centimals, for money supplied by E. Heny, for the improvement, maintenance, and cultivation of our sugar-cane estate called "La Fundacion," situated at Las Tejerias, jurisdiction of the municipality of Consejo, district of Ricaurte, of the State of Miranda, the boundaries of which are in conformity with the title of property which, as heirs of our principal, Mr. Carlos Benitz, is in our possession and is registered under number 38 and 41, of the first and second protocols, of the first quarter, under date of March 11, 1878, we hereby assign, cede, and transfer in favor of the said Mr. E. Heny, all the rights and actions that correspond to us or may to us correspond in future in said property "La Fundacion," as a guarantee to said Heny for any loss he may sustain in the capital he has invested in said estate, Heny remaining bound to answer for the other debts incurred by the said estate, which he is to pay off when we make, as we do now make, formal cession in his favor of our credits in

said estate. To the accomplishment of what is herein agreed to, we bind our present and future property, in accordance with the law. E. Heny, over twenty-one years of age, wedded to Bertha Benitz, residing in this city, do accept the above transfer and bind myself to carry out my share of the agreement.

Caracas, May 1, 1892.

(Signed) EMILIA B. DE BENITZ.
(Signed) MATILDE BENITZ,
(And others in interest.)

And whereas it is clear that in this contract, stating that they owe the claimant Heny the sum of 12,606 pesos sencillos and 80 centimals, as invested by him in the estate "La Fundacion," and that they owe besides 26,833 pesos and 33 centimals to sundry others whom they call "creditors of our estate 'La Fundacion,'" thereby indicating that this sum as well was invested in said estate, the heirs of Carlos Benitz wanted to give a guarantee to Heny for any capital invested by him in that estate, and at the same time wished to be freed from the other debts incurred by said estate, and therefore transferred to him, Heny, their credits in that estate, while he agreed to answer for all the debts;

Whereas certainly this contract is neither a mortgage nor a sale of the estate, and, lacking the characteristic stipulations of an antichresis, can not properly be counted to that species of contracts, to which, in substance, it seems to bear most resemblance;

Whereas, however, whatever may be the technical deficiencies of the instrument, while interpreting contracts upon a basis of absolute equity, what the parties clearly intended to do must primarily be considered;

And whereas it was clearly the intention of parties that no one but the claimant should have a right to expropriate anything belonging to this estate, nor to profit by the revenues—at all events so long as his interest in the estate should last, which interest the heirs wished to guarantee; and whereas this interest existed as well in the sum invested by him in the estate as in the debts he assumed and which he might pay out of the estate, the credits and debits of which were equally transferred to him by the owners; whereas, therefore, according to this contract at the moment the facts which obliged the Venezuelan Government to restitution took place, the only person who directly suffered the "detrimentum" that had to be repaired was the claimant E. Heny;

Whereas it being true, that according to the principles of law generally adopted by all nations and also by the civil law of Venezuela, contracts of this kind only obtain their value against third parties by being made public in accordance with the local law, in this claim before the Commission, bound by the protocol to decide all claims upon a basis of absolute equity, without regards to objections of a technical nature or of the provisions of local legislation, this principle can not be an objection, and even when made this objection may be disregarded without impairing the great legal maxim *locus regit actum*, as equity demands, that he should be indemnified who directly suffered the losses, and it not being the question here who owned the estate "La Fundacion," but who had the free disposition over and the benefit and loss of the values for which restitution must be made, and who, therefore, in equity, owns the claim for that restitution against the Venezuelan Government;

Whereas, then, it being stated that the American citizen E. Heny owns a claim against the Government of the United States of Venezuela for the partial destruction of the plantations, the confiscation of

horses, cattle, and other valuables, and the imposing of loans upon the estate "La Fundacion" during the Legalista revolution in 1892, it now remains to state, which sum may in equity be claimed on this ground;

And whereas the claimant, to prove the correctness of the sum, produces an official certificate of Gen. Antonio Fernandez, civil and military chief of the State of Zulia, and chief of the second division of the Army of the Center during the Legalista revolution, which certificate was thereafter recognized by said General Fernandez, and the correctness of its contents affirmed before the court of the first instance in civil and commercial matters of the Federal District, by him as well as by two other sworn witnesses; and whereas this certificate reads as follows:

CIVIL AND MILITARY HEADQUARTERS OF THE STATE OF ZULIA,
Maracaibo, March 7, 1893.

CITIZEN: Gen. Antonio Fernandez, civil and military chief of the State of Zulia, and chief of the second division of the Army of the Center during the Legalista revolution, certifies that the statement at the foot of this document sets forth the *pro rata* supplies furnished the army of the revolution by the plantation called "La Fundacion," situated at Las Tejerias, the property of the heirs of Señor Carlos Benitz, whose general agent and representative is Señor E. Heny.

Twenty-four tablones of sugar cane, at two thousand bolivares each, forty-eight thousand bolivares; twelve tablones malojo, at eight hundred bolivares, nine thousand six hundred bolivares; four saddle horses, at eight hundred bolivares each, three thousand two hundred bolivares; one tablone maize, at six hundred bolivares; two cart horses, at eight hundred bolivares each, one thousand six hundred bolivares; one breeding mare, four hundred bolivares; one mare with her colt, four hundred and eighty bolivares; eleven yokes of oxen, eight thousand eight hundred bolivares; one single ox, four hundred bolivares; lumber, prepared for building and other uses, one thousand two hundred bolivares; three kilometers of fences with their posts destroyed, one thousand six hundred bolivares; in money, forced loans of fourteen hundred and fifty-eight bolivares, and from the business house at "Las Tejerias" thirty-three cattle, each one hundred and twenty bolivares, three thousand nine hundred and sixty bolivares; merchandise and tools from same store, eight thousand bolivares; for loss of time in consequence of the war, forty-eight thousand bolivares; chief steward paid for Antonio Fernandez, at the rate of 600 bolivares for eight months, forty-eight hundred bolivares; sum total, ninety-two thousand four hundred and ninety-eight bolivares.

And whereas by this certificate evidence is given of the facts therein mentioned;

And whereas the estimation of the therein mentioned values has to be recognized as just, being the authentic estimate of the authority that expropriated said values for the benefit of the army;

And whereas it is thus stated that claimant furnished to the army:

	Bolivars.
24 tablones of sugar cane, at 2,000 bolivars each	48,000
12 tablones malojo, at 800 bolivars each	9,600
1 tablone maize	600
4 saddle horses, at 800 bolivars each	3,200
2 cart horses, at 800 bolivars each	1,600
1 breeding mare	400
1 mare with her colt	480
11 yoke of oxen	8,800
1 single ox	400
Lumber prepared for building and other uses	1,200
In money, forced loan	1,458
And from the business house in Las Tejerias on the estate "La Fundacion:"	
33 cattle, each 120 bolivars	3,960
Merchandise and tools from same store	8,000
Chief steward paid for Antonio Fernandez, at the rate of 600 bolivars per month for eight months	4,800

Sum total

387,270

92,498

This sum has to be paid as a restitution to the claimant by the Venezuelan Government, and to it should be added the value of three kilometers of fences and posts destroyed by the military authority, and estimated by that authority at 1,600 bolivars, making altogether 94,098 bolivars;

Whereas the claimant further claims 48,000 bolivars for loss of time in consequence of the war, which sum is also mentioned in the above-cited certificate;

And whereas this certificate, although being evidence of the facts therein stated, which were the causa of the debits incurred by the Government, and containing the estimate by the proper authorities of the values claimant was deprived of, it is, however, not in itself a causa, and does not create a debit where the causa is wanting;

And whereas the interruption of the ordinary course of business is an invariable and inevitable result of a state of war, under which all inhabitants, whether citizens or aliens, have to suffer; and whereas losses incurred by reason of such interruption are not subject to compensation by the government within whose territory the war exists;

Whereas, therefore, loss of time in consequence of the war is not a loss whereupon compensation can be equitably demanded, this part of the claim has to be disallowed.

In view of the foregoing, an allowance is made in this claim for the sum of 94,098 bolivars, or with interest thereon at 3 per cent per annum from March 15, 1893, the date of the presentation of the claim to the Venezuelan Government, to December 31, 1903, the anticipated date of the final award by this Commission.

And as to the second claim:

Whereas claimant claims 12,000 bolivars for 4½ tablones of growing sugar cane, confiscated and set aside for the food of the soldiers, and taken and destroyed on the estate "*La Fundación*" during the months of November and December, 1899; and whereas the Venezuelan Government produced a deed authenticated before the mercantile court of first instance of the federal district on the 28th of November, 1898, and recorded in the public register's office of the district of Ricaurte on December 2 of the same year; and whereas in this instrument it is stated that on the 25th of November, 1898, the heirs of Carlos Benitz, and among them Bertha Benitz, acting under the authorization of her husband, E. Heny, made a sale to Mrs. Altagarcia H. de Ortega Martinez, of the same estate, "*La Fundación*," *free of all incumbrances*, for the sum of 36,000 bolivars, with an agreement of resale within the term of one year;

And whereas it is proven thereby that on the 28th of November, 1898, the claimant Heny, without reserve as to any of his own rights, authorized his wife, Bertha Benitz, to partake in a sale of the said estate *free of all incumbrances*, and that this sale was effected; whereas, therefore, on that date Heny lost or abandoned whatever rights he might have had in this estate or its appurtenances and revenues;

And whereas no proof is given that the claimant acquired or recovered any right in the estate or its appurtenances and revenues later than this 28th of November, 1898; whereas, therefore, it is not proven that the claims against the Government of Venezuela for restitution for losses suffered on the estate "*La Fundación*" during the months of November and December, 1899, is owned by the claimant, this claim ought to be disregarded.

The United States and Venezuelan claims commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of The United States of America on behalf of Emerich Heny, claimant, against the Republic of Venezuela, No. 6, the sum of twenty-three thousand nine hundred fifty four and 25/100 dollars (\$23,954.25) in United States gold coin is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America, in accordance with the provisions of the convention under which this award is made.

HARRY BARGE, *Umpire*.

Attest:

J. PADRON UZTÁRIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered August 11, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Ernest C. Bliss, William B. Boulton, John Schimmell, and Frederick A. Dallett, partners doing business as Boulton, Bliss & Dallett, claimants,	} No. 7.

v.

THE REPUBLIC OF VENEZUELA.

BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of Boulton, Bliss & Dallett, a partnership, against the Venezuelan Government in the sum of 257,027.02 bolivars, with interest, for services rendered.

The claimants are all residents and citizens of the United States, doing business under such firm name in the city and State of New York. They are the owners of the "Red D" line of steamers registered under the American flag and engaged in trade between New York City and various ports of the Republic of Venezuela.

The claim here made is for services rendered the Republic of Venezuela for the carrying of Venezuelan mail from ports of Venezuela to New York from April 1, 1897, to December 31, 1902.

No express contract fixing a rate of compensation seems to have been made, but the mail was carried by this line of steamers at the request of the officers of the Republic, and upon their assurance that a just and reasonable compensation would be paid.

Bills have been rendered to the Venezuelan Government from time to time upon the basis of a just and reasonable compensation for this service, copies of which are attached to the memorial, making a total of 257,027.02 bolivars.

There can be no question but that this is a claim that should be allowed in full, with interest from the dates of the various accounts rendered. The service performed was one for which a liability on the part of the Venezuelan Government would be implied, even if there was not, as in this case, the agreement on the part of the Venezuelan Government to pay a just and reasonable compensation. The only possible question is, what that compensation should be. The bills rendered are upon the basis for which similar services are paid for by other governments, members of the Postal Union, and this would seem to be a proper rule by which to determine a just and reasonable compensation.

An award should therefore be made in favor of the claimants for the full amount claimed, with interest from the date of the presentation of each of the various accounts. The following is a statement of the amount claimed, with interest thereon:

Dates due.	Term.	Amount claimed.	Interest.
	<i>Yrs. Mo.</i>		
March 31, 1899.....	5 2	B. 109,657.00	B. 16,996.85
March 31, 1899.....	4 2	42,159.40	5,269.90
March 31, 1900.....	3 2	32,189.80	3,057.95
December 31, 1900.....	2 5	26,373.60	1,912.10
December 31, 1901.....	1 5	27,069.82	1,151.30
December 31, 1902.....	5	19,558.40	244.40
		257,027.02	28,632.50

Respectfully submitted

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

No. 7.

The honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied the claim presented by Messrs. Boulton, Bliss, and Dallett, American citizens, and respectfully shows to this tribunal:

The establishment of the "Red D" Line of steamers dates from the year 1877. During a period of more than fifteen years it has not occurred to its proprietors to claim from the Government of Venezuela any indemnity for the services rendered in the carrying of the mail of the Republic to the United States. It would seem, therefore, that the rendering of this service was to the proper interest of the claimant company. The limitation of the claim is also worthy of note—from the year 1897 to date. In the offices of State there are to be found no data which would prove the existence of a contract between the "Red D" Company and the Government of Venezuela, which, it is worthy of note, has not accepted nor rejected in principle the legitimacy of the claim. I believe, therefore, that this is a matter which ought to be adjusted exclusively between the Government and the claimant, and which falls outside the jurisdiction of the arbitral tribunal, because in no case is it derived from the failure to execute a contract or any act of violence or denial of justice on the part of the Venezuelan authorities.

In any case the Commission would lack sufficient elements to judge concerning the justness of the amount claimed.

Caracas, June 27, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

<p>THE UNITED STATES OF AMERICA, ON BEHALF of Ernest C. Bliss, William B. Boulton, John Schimmell, and Frederick A. Dallett, partners doing business as Boulton. Bliss & Dallett. claimants,</p> <p style="text-align: center;">v.</p> <p>THE REPUBLIC OF VENEZUELA.</p>	<p>No. 7.</p>
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REPLICATION ON BEHALF OF THE UNITED STATES.

The United States makes replication to the answer of Venezuela in the matter of the claim of Boulton, Bliss & Dallett, and submits additional evidence in said claim.

In the answer of Venezuela it is stated that the establishment of the "Red D" Line of steamers dates from the year 1877 and that during a period of more than fifteen years it did not occur to the proprietors of the line to make any claim against the Government of Venezuela for services rendered in the carrying of the mail of the Republic to the United States, and therefore it would seem that the rendering of this service was to the interest of the claimant company, and, further, that the limitation of the claim is worthy of note, as it only dates back to the year 1897.

In reply to this, reference is made to the letter of Messrs. H. L. Boulton & Co., agents of the "Red D" Line at Caracas, dated March 2, 1897, which fully explains why no charge had ever been made to the Republic of Venezuela up to that time and why, because of the installation of a fast line of steamships and a greater cost arising therefrom, it had become necessary to charge for the transportation of mails. The "Red D" Line did not make any charge for the transportation of mails from the United States to Venezuela until the year 1891, although the ocean mail service was enacted in 1884 in the United States. Originally the "Red D" Line employed sailing vessels in its service. These were subsequently changed into a steamship line of chartered cargo steamers. Later on the line began to improve its service, which only reached its present standing about the time that it began to charge the Government of Venezuela for the transportation of mails.

The letter of Boulton & Co., above referred to, addressed to the ministry of fomento, states:

But the increase in the bulk of business between this Republic and that of the United States has not been so profitable to the "Red D" Line of steamships as the cost of construction of its fleet was high, and likewise are the expenses necessary to keep up its high standard, and for this reason the line will be obliged to collect in future, beginning with the 1st of April next, from the Government of Venezuela for the transportation of its mails between the Venezuelan ports of its schedule, as well as for Curacao, United States, and Europe, the following sea rates, viz, 8 bolivares per kilogram gross of letters and 50 centimos of a bolivar per kilogram gross of printed matter, samples, etc., which is one-half of what the Government charges for the dispatch of said mails.

The mails shall be weighed on board of the steamers in the presence of the agent of the Government, and the agents of the line in each port will advise the weights to the corresponding post-office to be recorded.

Although no specific response was made to this letter, yet there are a continued series of acts by the Republic of Venezuela ratifying and confirming the understanding contained in the said letter.

Reference is made to the letter of March 4, 1899, from Boulton & Co. to the minister of posts and telegraphs, complaining that the postmaster at La Guayra did not furnish to their agency a note of the weight of the mails dispatched by him by their steamers, and in reply thereto we refer to the letter of the same date from the ministry of posts and telegraphs to Messrs. Boulton & Co., which states that the letter has been referred to the postmaster-general with explicit orders to have the postmaster at La Guayra make the necessary note of the mails dispatched by the American steamers. Reference is also made to the letter of March 18 of the same year from the postmaster-general which makes specific reference to the letter of the 4th of March from Boulton & Co., saying that in reply to said letter the postmaster at La Guayra states:

I have the honor to acknowledge the receipt of your note of the 10th instant, bearing No. 114, in which you transmit me the claim made by Messrs. H. L. Boulton & Co. about the regular delivery of the weight of mails for the exterior sent by the steamers of the "Red D" Line, and I have the pleasure to inform you that this service is being rendered with all regularity.

On the 13th of December, 1900, Boulton & Co. addressed a letter to the Government of Venezuela stating that a record of the weight of the mails dispatched by the post-office at the port of La Guayra was not being kept, and that "having urgent necessity of receiving them (the records) with all regularity, with the object of duly keeping the account of the mail transported by the steamers above named, we beg you kindly to issue the corresponding order that said data be given to us without delay, in conformity with the resolution of the ministry of posts and telegraphs No. 2221, dated the 15th of January, 1898." In response to this the department of posts and telegraphs wrote to Boulton & Co., saying that as a result of their petition, dated the 13th instant, the necessary orders were issued.

On the last two pages of the proofs submitted will be found the last two accounts of the weight of mails received at Puerto Cabello and at Maracaibo in May and June of the present year. Should the Commission desire, other records of this nature can readily be supplied.

We submit that this correspondence on the part of Boulton & Co., and on the part of the Republic of Venezuela and the orders issued by the Republic of Venezuela, together with the statement as to the weights of mails supplied to the claimant company, and the fact that no exception has ever been taken by Venezuela to the rate specified, show the existence of a tacit agreement fully recognized by the Government of Venezuela, both as to its liability and the rate to be charged. This claim should, therefore, be paid in full with interest from the respective dates of demand.

In conclusion it is important to note that the Venezuelan Government is a member of the Universal Postal Union, which it entered by act of its Congress on the 11th day of April, 1878, and moreover, by the Ley de Correos de los Estados Unidos de Venezuela, 1898, Title VII, article 65, it is provided that—

The carrying of foreign correspondence shall be done by means of foreign mail ships under the conditions and with the formalities established or to be established for this international service.

In the same ships and in the same manner the correspondence from one port shall be sent to another of the Republic where said ships may touch.

From the above it is evident why the Government of Venezuela states in its answer that it does not reject in principle the legitimacy of the claim.

With reference to the point raised by Venezuela as to the jurisdiction of the Commission over this claim, the United States begs leave to call the attention of the Commission to Article I of the protocol, which clearly shows that this claim is one proper to be brought before it for its decision.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Ernest C. Bliss, William B. Boulton, John Schimmell, and Frederick A. Dallett, partners, doing business as Boulton, Bliss & Dallett, claimants,	} No. 7.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

DECISION AND AWARD.

Opinion by Doctor Paúl, Commissioner.

The Commission awards to the claimants the sum of \$27,644.23
United States gold.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Ernest C. Bliss, William B. Boulton, John Schimmell, and Frederick A. Dallett, partners, doing business as Boulton, Bliss & Dallett, claimants,	} No. 7.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

Doctor PAÚL, *Commissioner*:

The United States presents the claim of Boulton, Bliss & Dallett against the Government of Venezuela for the sum of Bs. 257,027.02 for services rendered.

The claimants are the owners of the "Red D" Line, which runs between New York and several ports of the Republic of Venezuela.

The claim is founded on services rendered to the Government of the Republic, for carrying the mail from the Venezuelan ports to New York, from April 1, 1897, to December 31, 1902, and also on the interest of the stated sums in which such services are annually estimated.

The claimants acknowledge that no express contract exists fixing a rate of compensation, but that the mail has been carried by their steamship line, at the request of employees of the Government of the Republic, and under the promise that they should be paid a just and reasonable compensation.

The agents of Boulton, Bliss & Dallett, in Caracas, have presented, from time to time, memorials to the Government of Venezuela, indicating the weight of the bags that were carried; and in a letter dated march 9, 1899, the said agents complained that until such date negotiations have not been entered upon with a view to carrying at a contract.

In view of the facts, as they appear from the documents submitted with the claim, it is necessary, owing to the especial nature of the same, to determine if they really constitute a proper basis for presenting a claim to be examined and decided by this Commission.

In accordance with article 1 of the protocol of Washington, it is incumbent upon this Commission to examine and decide "all claims owned by citizens of the United States of America against the Republic of Venezuela, which have not been settled by diplomatic agreement or by arbitration between the two governments."

It is not opportune to make any comments with regard to the limitations and pertinency that enter as elements for the qualification of the claims submitted to the jurisdiction of the Commission as established by the terms of said article of the protocol; but it is necessary to fix the meaning of the word "claim," so as to be able to infer if the demand presented in the name of Boulton, Bliss & Dallett properly constitutes a claim.

The word "claim," in its most general meaning and in its juridic sense, is equivalent to a pretention to obtain the recognition or protection of a right, or that there should be given or done that which is just and due.

In the meaning of the word "claim" there is therefore included any kind or character of demand which involves a principle of justice and equity; and this in the abstract applies to the jurisdictional faculties of this Commission and the circumstances, which in accordance with the especial terms of article 1 of the protocol limits that jurisdiction. The amplitude of the phrase "all claims" makes it possible that even the demands which are unforeseen by the law, or which, by the absence of proper agreements, lack juridical foundation, entitling them to be examined and confirmed under the proceedings of an ordinary court, must be considered by this tribunal of exceptional jurisdiction which has to decide them upon their merits and upon a basis of absolute equity.

In accordance with this reasoning, the claim presented by the honorable agent of the United States, in the name of Boulton, Bliss & Dallett, possesses the necessary qualification to be examined and decided by this Commission, under the principles of justice and equity which should guide its judgments.

The rendering of services is the fundamental fact of the claim in question. These services consist in the carrying of the mail by the steamships of the "Red D" Line from April 1, 1897, to December 31, 1902. The especial nature of this service requires, in order to establish the juridical bound which create obligations and rights between the two parties, the existence of an agreement or mutual understanding will establish the precise price which must be paid. The efficacy of the convention or agreement is of primary consideration in this kind of operations. Without it the case for services does not exist, but only is a gratuitous service. This last position was the one that Boulton, Bliss & Dallett maintained before the Government of Venezuela

for nearly half a century from the date that the vessels between New York and the Venezuelan ports began their running until the 2d of March, on which date was notified the minister of fomento to the effect that from April 1 of that year they would charge to the Venezuelan Government for the carrying of mail bags, not only to the ports of Venezuela that the steamers visit, but to Curaçao, United States, and Europe the following sea prices: Eight bolivars per gross kilogram of letters and cards and fifty one-hundredths of a bolivar per gross kilogram of printed matter.

The agents of the line indicated in the same letter of March 2, 1897, that the bags should be weighed on board of the steamers before the agents of the Government and the agents of the line in each port, advising the weights to the respective post-office for its record.

On January 15, 1898, the ministry of fomento issued under No. 2281 a resolution ordering to the La Guaira post-office master to give to the agents of the "Red D" Line a note of the weight of the bags sent by the American steamers, and on March 6, 1899, and December 10, 1900, the same ministry, on petition of Messrs. Boulton & Co., repeated his instructions in order to give to the said agents, through the corresponding post employees, the note of the weight of the bags embarked on board the steamers of the line.

Two elements tend to define the relations established between Messrs. Boulton, Bliss & Dallett and the Venezuelan Government with reference to the transportation of the mail, as it appears from the notes exchanged between the two parties since March, 1897. The first is that Boulton, Bliss & Dallett should charge the Government from April 1 of the same year 8 bolivars per gross kilogram of letters and cards and fifty one-hundredths of a bolivar per kilogram of printed matter and samples, and the second that the Government virtually accepted the said tariff from the moment that it ordered its post-office employees to take the weight of the bags and send it each time to Boulton & Co., as it was requested by them, in order to make the liquidation of the amount which the Government should have to pay for the service. These two elements are enough to deduct in justice the following conclusion: The Government of Venezuela owes to Boulton, Bliss & Dallett for carrying the mail on the steamers of the "Red D" Line from April 1, 1899, to December 31, 1902, the resulting sum of the two factors agreed by both parties, gross weight in kilograms of letters and cards and gross weight in kilograms of printed matter and samples, and the sum of 8 bolivars per kilogram for letters and cards and fifty one-hundredths of a bolivar per kilogram of printed matter and samples.

This could be a simple arithmetic calculation, which would not embarrass the Commission; but one of the factors is lacking, namely, the separated weight of the letters and printed matter, as the bags which the post-office employees weighed contained indistinctly letters, cards, printed matter, and samples, is which has been taken by Messrs. Boulton & Co., to establish their account with the Government, to make an arbitrary distribution of a sixth part for letters and cards and five-sixths parts for printed matter and samples. There has not been presented before this Commission any proof or information which may establish that such distribution is equitable and well founded, and, in consequence, the real weight of letters and cards and that of printed matter and samples, remains undetermined in the total sum

which the gross weight of the bags represents in the period of five years nine months comprised in their claim.

It is opportune to point out the difference exhibited by the first letter of Boulton & Co., date of June 14, 1898, which gives as gross weight of the bags which were carried by the steamers during a year from April 1, 1897, to March 31, 1898, the sum of 62,661,149 grams, in comparison to that of May 9, 1899, corresponding to the preceding year, which makes the weight of the bags to be 24,091,076 grams less weight in one year, quite the two-thirds. There must exist a grave error in the first calculation, since from April 1, 1898, to April 1, 1899, the business conditions of the country were the same as those of the preceding year, without the existence of any especial motive to which could be attributed such extraordinary diminution of volume and weight of the United States and Europe's mail. This observation is confirmed by the facts belonging to the following years, which have a reasonable proportion, as it is proven by the following figures:

	Grams.
From April 1, 1898, to April 1, 1899	24, 091, 076
From April 1, 1899, to April 1, 1900 (time of war)	18, 398, 396
From April 1, 1900, to December 31, 1900	15, 070, 630
From December 31, 1900, to December 31, 1901	15, 479, 608
From December 31, 1901, to December 31, 1902 (period of war)	14, 176, 231

As the Commission has no means of ascertaining the precise data which establish clearly the gross weight of the two classes in which the different kinds of mail were proposed to be divided, as accepted by the Venezuelan Government, and considering also that the figures given for the gross weight of the bags of the year 1897 to 1898 are not in proportion with the weight of the following years, and the absence of any document to prove the exactness thereof; and, furthermore, as this claim has to be decided only on the proofs and information presented by both parties on the basis of absolute equity; and taking also in consideration that Messrs. Boulton & Co., agents in this city of the "Red D" Line, have several times made proposals to the Venezuelan Government to celebrate a contract fixing an annual sum for the carrying of the mail, it is my opinion that it is necessary to estimate the average of the accounts as made up by the agents of Boulton, Bliss & Dallett for the last five years. That average gives the sum of 29,474 bolivars, which I consider admits of a reduction to the sum of 25,000 bolivars as the natural rebate which all debtors are entitled to when the creditor fixes the price for services rendered, especially when they amount to a considerable sum extending over a period of years.

Having thus determined the annual price for the carrying of the mail, and calculating the time elapsed from April 1, 1897, to December 31, 1902, or five years and nine months, the value of the service comes to the sum of 143,750 bolivars.

With reference to the interest, the circumstances set forth in this opinion make it apparent that the claim is presented under conditions which do not justify the allowance of interest.

Therefore an award is hereby made in favor of Boulton, Bliss & Dallett for the sum of 143,750 bolivars, equivalent in American gold at the average rate of exchange to \$27,644.23.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of Ernest C. Bliss, William B. Boulton, John Schimmell, and Frederick A. Dallett, partners, doing business as Boulton, Bliss & Dallett, claimants, against the Republic of Venezuela. No. 7, the sum of twenty-seven thousand six hundred forty-four and $\frac{23}{100}$ dollars (\$27,644.23), in United States gold coin is hereby awarded in favor of said claimants, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United State of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered July 17, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Leonard B. Smith, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 8.
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BRIEF ON BEHALF OF THE UNITED STATES.

I.

STATEMENT OF FACT.

The United States presents in this case the claim of Leonard B. Smith for \$6,239.32, and interest amounting to \$1,007.65.

The claimant is a native-born citizen of the United States, who has, since the year 1876, resided in the city of Curaçao, West Indies. He is the sole owner of the steamship *Alliance*, built at Curaçao in 1895, originally registered as a Dutch ship and subsequently, in February, 1897, registered as a Dominican vessel in the name of Carlos A. Mota, who had, however, no interest in the vessel, which is and has remained the property of the claimant.

On June 15, 1897, the *Alliance* left the port of San Domingo bound for Curaçao. Meeting adverse winds and her supply of coal running out, the vessel drifted before the wind and was blown upon the bar at Maracaibo.

The next day she put into the port of Maracaibo in distress. Immediately upon the arrival of the *Alliance* she was seized by the collector of the port of Maracaibo on the charge of the violation of the custom laws of Venezuela, and was detained by the Venezuelan authorities until the 11th day of January, 1898. In the meantime, by a decree of the Venezuelan national court of finance, rendered on August 14, 1897, the *Alliance* was held guiltless of any violation of the custom laws of Venezuela, and this decree was affirmed by the high court of Venezuela on the 12th day of November, 1897.

The damages claimed are \$3,439.32 for expenses, \$2,000 for the cost of necessary repairs due to the neglect of the vessel while in the custody of the Venezuelan authorities, and \$800 for interest on the investment or loss of use of the vessel.

Upon this claim being submitted to the Venezuelan authorities they presented as objections to the claim, first, that they had a right to detain the vessel until the question of violation of custom regulations had been properly determined by their own courts; second, that the vessel was registered as a Dominican vessel; and, third, that the claimant, if he have any claim, must first have recourse to the Venezuelan courts for its adjudication, and not to an intervention on behalf of the United States Government.

II.

The seizure of the schooner Alliance by the Venezuelan authorities was wholly unwarranted and unjustified by even any probable cause.

An examination of the vessel's papers submitted in evidence in this case will show affirmatively that there were not in the papers of this vessel any irregularities whatsoever raising the slightest question of a violation on the part of this vessel of any custom regulations of the Republic of Venezuela.

The seizure of the vessel by the Venezuelan authorities was wholly unjustified. This has not only been found to be the fact by the courts of that country, but it also appears from these decisions and from the vessel's papers that there was no warrant of probable cause justifying in any sense of the word the taking of the proceeding. There may, of course, be proper cases in which circumstances would warrant the seizure of the vessel and holding it pending an adjudication, and if that adjudication was had without unreasonable delay, that circumstance would act as a mitigation of damages, but such is not the fact in this case, nor has that principle any application. Here the vessel was seized wantonly, without anything in its sailing papers or in the circumstances of the case warranting any such action. On the contrary, it was a vessel that had put into this port in dire distress, as the result of the unavoidable calamities of the sea.

To say that, as a matter of international law, a vessel clearing for one port and forced by disaster and shipwreck to take refuge in a port for which it did not clear, is therefore guilty of any violation of the custom regulations of the country in whose port it is forced to take

shelter, is too manifestly absurd, perhaps, to need argument. The nation that would undertake to sustain such a proposition would be guilty of a violation of the most fundamental principles, not only of the comity of nations, but of the duties of humanity.

And yet it is apparent from the facts in this case that this fact that the sailing papers of the vessel were not for the port of Maracaibo was the only circumstance that led the Venezuelan authorities to think themselves justified in seizing the vessel.

III.

The registration of the vessel under Dominican law is no defense.

Whether it was or was not any violation of the laws of San Domingo for the vessel to have been registered under its laws in the name of one not the actual owner, or when the vessel actually belonged to the citizens of another country, is wholly immaterial to this present controversy. The fact remains and is clearly established that the vessel belonged to the claimant in this case, and that he is the person who has been injured by the illegal acts complained of.

The protocol under which this Commission has been appointed calls for the consideration of all claims of citizens of the United States against the Republic of Venezuela. This must be regarded as one of such cases, nor should the Venezuelan Government be allowed to escape responsibility by a pretense of an irregularity which is in no way affected here and furnished no excuse for the wrongs done by her in this case. The necessary question before this Commission is whether the claimant is a citizen of the United States and has been injured by any acts for which the Government of Venezuela is responsible. Of this fact there can be no question. This Commission is not called upon to nor can it consider whether the claimant has been guilty of any irregularities toward the Government of San Domingo or otherwise, in no wise entering into or forming any basis of excuse for the acts done by the Venezuelan Government.

It is manifest that this claim of the Dominican registration of this vessel is now brought forward to avoid responsibility for wrongful acts committed at the time without a shadow of an excuse.

IV.

The position of the Venezuelan Government that this claim should have been submitted to its local tribunals for adjudication is not well founded.

Without in any way controverting the truth of any of the statements on which this claim is based or the correctness of the amount claimed or its own liability therefor, the authorities of the Republic of Venezuela contended merely that the Government of the United States ought not to intervene because the claimant had a proper and sufficient remedy in the local tribunals of that country. This position of the Republic of Venezuela was wholly untenable. The cases in which one State has the right to intervene to protect the rights of its citizens resident or temporarily within the domain of another State fall into two general classes. The first, cases in which the citizen has received

positive maltreatment at the hands of the foreign government or those for whom it is directly responsible. The second, cases in which the citizen has been denied ordinary justice in the foreign country. In this latter class a distinction again is to be made between cases of a denial of justice in actions against the foreign government as such and those in which there is a denial of justice in suits between individuals to such an extent that the foreign government may be held responsible.

The right of intervention in the first class of cases is direct and immediate, and there is no necessity for resort to local tribunals as a condition precedent to an application to the home government.

The wrongs here complained of, arising from the illegal seizure of this vessel by the Venezuelan authorities, makes the case clearly one of the first class.

Even if we were to concede that the claims were of such a character as ought to be first submitted before a local tribunal for adjudication, yet the Republic of Venezuela is not in a position to call for such submission. The decree of 1873 establishing a high federal court before which all claims against the Government must be adjudicated contains provisions which make the latter procedure practically a denial of justice. It is provided in substance in that decree that should it clearly appear that any claimant has exaggerated the injuries suffered by him he shall lose whatever right he may have had, and incur a fine of from 500 to 3,000 venezolanos (\$500 to \$3,000) or imprisonment from six to twenty-four months. The letter of the Venezuelan authorities, in citing the rendition of this decree, proceeded with the statement that in 1869 a report was made to the Venezuelan Congress that the revenues of the country were being consumed in the payment of foreign claims, and calling upon Congress for some remedy in the situation. This connection makes it upon their own statement manifest that this decree was devised in its present form as an express means of preventing foreigners from instituting or prosecuting claims against the Venezuelan Government. This was its origin and spirit, and such has been its manifest effect.

It would be useless to discuss this situation further. It is clear that a court so established, and the right of appeal to which it was coupled with such restrictions, can not be compared either to the Court of Claims of the United States or to any other judicial tribunal to which it has been held that claims of foreigners as well as domestic citizens should first be submitted.

The views above expressed are clearly supported by the authorities. See Phillimore's International Law, Vol. II, pages 3 et seq., and especially the following language on page 12:

VII. It may indeed happen, as the same author most justly observes, that the debtor may adopt measures of domestic finance, so fraudulent and iniquitous, so evidently repugnant to the first principles of justice, with so manifest an intention of defeating the claims of its creditors, as to authorize the government of the creditor in having recourse to acts of retaliation, reprisals, or open war—such measures, for instance, as the *permanent* depreciation of coin or paper money, or the absolute repudiation of debts contracted on the public faith of the country.

The instances above quoted are matters of finance. The same principle applies absolutely to an attempt to accomplish the same thing by a provision such as was made by Venezuela in this case making recourse to its tribunals subject to risk both of financial loss and personal imprisonment.

V.

The position of the Venezuela Government that this claim should have been submitted to its local tribunals, even if well founded, has been expressly waived by the signing of the protocol under which this Commission is appointed.

Whether the position of Venezuela as outlined in the correspondence of its diplomatic representatives with those of the United States is or is not well founded, it has never been recognized by the United States, but has long been a subject of controversy between the two countries and has been one of the essential causes for nonsettlement of many of the controversies which are to be submitted to this Commission. It was largely if not entirely because of disagreement with respect to this position of Venezuela that the two countries were unable to amicably agree upon the settlement of this and other claims. And it was because of this disagreement on this question to a large extent that there arose the necessity of this Commission.

The language of the protocol itself can bear no other interpretation. Under its provisions—

All claims owned by citizens of the United States of America against the Republic of Venezuela and which have not been settled, * * * and which shall have been presented to the commission hereinafter named, * * * shall be examined and decided by a mixed commission. * * * The commissioners or, in case of their disagreement, the umpire shall decide all claims upon a basis of absolute equity without regard to objections of a technical nature or of the provisions of local legislation.

It would have been difficult to have chosen language more directly applying to this position which has been taken by the Republic of Venezuela in the past. The express exclusion from the consideration of the Commissioners of any local legislation excludes the decree of 1873 as well as any other local enactments—for by the word local we are to understand Venezuelan law or United States law as the case may be as being local to each of those countries in distinction from those principles of natural law which are alone applicable as between two or more countries.

It has moreover been expressly and repeatedly held that the reaching of an agreement for arbitration or the appointment of a commission under circumstances such as this, is an express waiver of any provisions of law whereby the claims should first have been submitted to local tribunals.

In the controversies which arose between the United States and Great Britain under the treaty of November 19, 1794, commonly called the Jay Treaty, it was and had been contended by Great Britain that the claims of citizens of the United States could and should be first submitted to the determination of the local tribunals of England. But it was held by the commissioners that the making of the treaty within certain lines defined by it as to the class of cases which should be taken up substituted the commissioners as a court absolutely in place of any such local tribunals, and was a waiver of any claim that the cases should first have been submitted to such local tribunals for adjudication. (3d Moore's International Arbitration, pp. 3073, 3101 to 3115, 3161 to 3206.) See also the opinion of William R. Day, as an arbitrator appointed under the protocol between the United States and the

Republic of Haiti, in which Judge Day used the following language with reference to a similar claim that the cases should have been first submitted to adjudication of local tribunals:

The arbitrator in this case, however, is given jurisdiction of the differences between the two governments by the terms of the arbitral agreement, giving him jurisdiction and authority to determine certain differences. (For. Rels. 1901, p. 275.)

The protocol in this case having given this Commission power to hear and determine all claims owned by citizens of the United States against the Republic of Venezuela, its power is unlimited to hear and determine all such claims whether they might or might not have been otherwise a proper subject for adjudication by some local tribunal of the Republic of Venezuela.

The contention of the Republic of Venezuela in this respect has therefore been abandoned, and the submission of all controversies to this Commission conceded by its executing the protocol under which this Commission is appointed.

VI.

The Venezuelan Government is liable in this case for the illegal seizure and undue detention of this vessel, and the damages consequent thereon.

It being, as we have seen, clear that the seizure of this vessel was without warrant even of probable cause, the Venezuelan Government must be held liable for the resultant damage. This right to relief is in this case increased by the fact that the matter was unreasonably and unnecessarily drawn out in the Venezuelan courts in the taking of an unnecessary appeal, by, in fact, the taking into court at all of a question of this character, and over and beyond that, the retention of the vessel for nearly two months after a final decree against the position of the Government. The right to relief and damages in such a case is clearly established. See the opinion of the Commission in the case of Callahan v. Mexico, set out in full in Moore's International Arbitrations, Volume IV, page 4346.

VII.

An award should be made in this case for the full amount claimed, with interest.

The claim for damages in this case is for the bare expenses attendant upon the seizure of the vessel, the necessary repairs due to the neglect of the vessel during its retention by the Venezuelan authorities, and an amount for the loss of use of the vessel equal to interest on the investment.

We think it is clear that this is a more than moderate demand. The case is one which, in its unusual features, would call for the allowance of punitive damages, as it is hard to conceive of the seizure of a vessel under more unwarrantable circumstances, nor of a more arbitrary detention of the vessel during the attempt to obtain a confiscation or impose a fine upon it for something that on the face of the case, in the first instance, had no foundation, and that in violation of every rule of common humanity to a vessel necessarily forced into a port in distress.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

No. 8.

To the honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied the claim presented by the American citizen, Leonard B. Smith, and as a result of his study shows:

The present claim dates back several years and has been the subject of a long correspondence between the two foreign offices.

The case, in brief, is as follows:

The steamer *Alliance* arrived at the port of Maracaibo without being destined therefor, as was shown by the ship's papers on board, and the Venezuelan authorities, following out strictly the provisions contained in law XXIV of the Code of Hacienda, detained it and ordered an investigation to be opened which the law applicable thereto renders necessary. In following out the judicial process all the formalities prescribed for the procedure established in this class of cases were observed; and no claim, therefore, can be set up because of the necessary observance of the local law.

As I judge that the best argument which could have been presented to sustain the rights of Venezuela, in refuting the contentions set up by the claimant, is contained in the diplomatic note sent by the minister of foreign relations to his excellency Francis B. Loomis, under date of April 26, 1898, contained in the "Yellow Book" of Venezuela, published in the year following, at pages 420 to 486, I limit myself to reiterating all the arguments contained in it and of attaching hereto a copy thereof.

Caracas, June 27, 1903.

F. ARROYO PAREJO.

NOTE.—It is well to observe that the Department of State of the United States has not up to date answered the note referred to, which proves that it accepted the theory set forth therein.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Leonard B. Smith, owner of the schooner <i>Alliance</i> ,	} No. 8.
v. THE REPUBLIC OF VENEZUELA.	

REPLICATION ON BEHALF OF THE UNITED STATES.

In the answer submitted on behalf of the Republic of Venezuela, the most important element in this case has been entirely disregarded, namely, that the steamer *Alliance* arrived at the port of Maracaibo in distress. Had she arrived under normal conditions there might have been a reasonable excuse for her seizure and detention, but under the

actual circumstances of her arrival there was no just cause for holding her, and the Republic of Venezuela is liable on the claim of her owner as presented to this tribunal.

The answer of Venezuela states that "the best argument which could have been presented to sustain the rights of Venezuela in refuting the contentions set up by the claimant is contained in the diplomatic note sent by the minister of foreign relations to His Excellency Francis B. Loomis, under date of April 26, 1898, contained in the Yellow Book of Venezuela, published in the year following, at pages 480 to 486," and on this Venezuela stands and limits herself to the argument contained therein. We beg to call the attention of the Commission to the fact that this communication has already been put in evidence by the United States and will be found among the last pages of the proofs submitted. In that argument the statement is made "The captain of the port would have been grossly derelict in his duty if, in view of the facts which caused the arrival of the vessel to be regarded as suspicious, he had neglected to institute the process or detain the vessel." In another portion of the argument, the statement is made: "The steamer *Alliance*, even though it may have arrived in distress, entered the territory where Venezuelan legislation was in force."

In the decision of the national court of finance of Maracaibo the court proceeds to announce its sentence upon the examination of the facts, and states that there are three cases in which, as established by law, a forcible arrival is justified. The first refers to damages on board, the second to sickness of the crew, whether contagious or not, and the third explicitly concerns acts of God absolutely preventing the vessel from proceeding on its voyage. And the court proceeds to the conclusion that the reason of the forcible arrival of the steamer *Alliance* falls within the provisions of the law relative to the third case. Moreover, in reviewing the testimony of Epitasio Rios, one of the appointed pilots of the bar of Maracaibo, who went from San Carlos to assist the steamship *Alliance*, struggling the whole night with the surges of the shoals of the bar, the court quotes his testimony wherein it is shown that the vessel was sighted with a flag flying asking for assistance, and that such assistance was sent to her, and it was observed that the vessel, as well as her crew, was running a great risk, her fuel being exhausted, and that it was necessary to break the windows of the cabin, a cask, and some cots, and even to make use of empty bags with which to enable her to get up steam to arrive at San Carlos, where she was supplied with firewood, provisions, and water, of all of which she was absolutely in want. Moreover, that the steamship was leaking in consequence of having been driven upon the shoals of the bar. The vessel was exonerated by this court and the matter was then carried to the high federal court, which in turn stated that her arrival had been due to an uncontrollable force and that nothing had been adduced to show that there was the slightest intention to violate any of the laws of the Republic.

We submit that nothing can be clearer than that the vessel arrived at the port of Maracaibo in distress and that her seizure was absolutely unjustifiable. It was perfectly evident at the time of her detention that the authorities of Venezuela were well aware of her condition, and common humanity should have caused them to allow the vessel to

undergo the necessary repairs, to suffer her to supply herself with coal and other necessities, and to permit her to proceed on her voyage unmolested. The unusual features of this case should call for the allowance of punitive damages and the precedent of this seizure should not be established.

We submit that the claim is both moderate and just and that award should be made for its full amount.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the legal representatives of Leonard B. Smith, deceased, claimants,	} The <i>Alliance</i> , No. 8.
v.	
THE REPUBLIC OF VENEZUELA.	

DECISION AND AWARD.

Opinion by Bainbridge, Commissioner.

The Commission awards to the claimants the sum of \$2,928.33 in United States gold.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the legal representatives of Leonard B. Smith, deceased, claimants,	} The <i>Alliance</i> , No. 8.
v.	
THE REPUBLIC OF VENEZUELA.	

BAINBRIDGE, *Commissioner.*

The steamer *Alliance* was built at Curaçao in 1895 for Leonard B. Smith, a native citizen of the United States, then domiciled in that island. She was 59 feet 4 inches in length, 12 feet 10 inches in breadth, and 5 feet in depth, with a capacity of 41 tons, and cost the sum of \$12,030.03. Smith registered the *Alliance* as a Dutch ship, and she carried the Dutch flag until February, 1897. He then made arrangements to use the ship in the trade between Santo Domingo and Curaçao, but found that it would be necessary to register her as a Dominican ship in order to be permitted to trade along the Dominican coast. The memorialist says:

To comply with said laws still further the papers were taken out in the name of Carlos A. Mota, a citizen of Santo Domingo, who, however, never acquired any real interest in the *Alliance*, his title being purely nominal, and the vessel continued to be still the property of myself solely.

The Dominican registry, given February 20, 1897, is, in part, as follows:

The President of the Republic to all to whom these presents may come, greeting: The citizen Carlos A. Mota, having proved that he is the lawful owner of the Dominican steamer *Alliance*, its captain being at present the citizen Martin Senior, and said owner C. A. Mota having furnished the bond required by law; I, therefore, grant him this letter of marque, etc.

On June 15, 1897, the *Alliance* sailed from San Domingo under the Dominican flag with clearance for Curaçao. On the morning of the 20th she was discovered on the shoals off the bar at Maracaibo flying a signal of distress. Epitasio Rios, one of the pilots of the port, thus describes her condition at the time:

We descried from San Carlos a vessel with the flag hoisted, asking for assistance, on the shoals of the bar near the place where the bark *Bremen* lies a wreck. I immediately left to send her the proper assistance, reached where she was at about 8 o'clock in the morning, and at once observed that the vessel, as well as her crew, was running the greatest risk. The vessel is a small steamship, bearing the name *Alliance*; she had the Dominican colors hoisted; her fuel being exhausted it was necessary to break the windows of the cabin, one cask, and some cots, with which, and even empty bags, her engine could get up 40 pounds of steam, which enabled us to arrive at San Carlos, where the commander of that fortress supplied her with firewood, provisions, and water, of all which elements the vessel was absolutely in want, and with which we could come that very day to Maracaibo. The steamship was at that moment leaking in consequence of the blows she had sustained by touching on the shoals of the bar.

Upon the arrival of the *Alliance* at Maracaibo, she was seized by the collector of the port on suspicion of unlawful traffic in fraud of the revenues of Venezuela. Proceedings were had before the captain of the port and the national court of finance of Maracaibo, which court on August 14, 1897, after a full investigation, decreed that the *Alliance* and her cargo were freed from sequestration and to be returned to the owners. An appeal from this decree was taken by the Government to the high court at Caracas, which, on November 12, confirmed the decree of the lower court. The high court held that "an uncontrollable force drove the *Alliance* into the harbor and that nothing had been adduced to show that there was the slightest intention to violate any of the laws of the Republic or defraud the revenues." This decree of the high court was published in Caracas on December 1, 1897. The *Alliance* was restored to the agent of Mr. Smith on January 11, 1898. In the court proceedings the value of the ship and cargo is stated to be 28,472.40 bolivares, equivalent to \$5,475.46 United States gold.

On April 15, 1898, a claim was presented to the Government of Venezuela by the United States, through its legation at Caracas, on behalf of Leonard B. Smith as owner of the *Alliance*. The claim was summarized as follows:

Expenses incurred by reason of the seizure and detention of the <i>Alliance</i> ..	\$3, 439. 32
Damages to the steamer resulting from detention.....	2, 000. 00
Interest on investment at 1 per cent per month during detention.....	800. 00
Total.....	6, 239. 32

Leonard B. Smith died intestate at Curaçao December 16, 1898, leaving his surviving widow, Clara M. Smith, and three sons, Arthur B. Smith, Leonard C. Smith, and Ralph G. Smith as his only heirs and next of kin, in whose behalf the claim is now presented to this Commission. In addition to the original demand the sum of \$1,007 is asked for accrued interest.

Replying on April 26, 1898, to the diplomatic note of the United States legation presenting this claim, the minister of foreign relations of Venezuela interposed two grounds of nonliability:

First. That the *Alliance* was proved to be a Dominican ship, a nationality other than that of the claimant.

Second. That the action taken by the Venezuelan authorities in the seizure and detention of the vessel was in line of the strict performance of their duties under the law of Venezuela for the protection of the revenues, and that no claim can be sustained growing out of the necessary observance of the local law.

The honorable agent for Venezuela refers the Commission to the diplomatic note of the minister of foreign relations as his own answer to the claim.

The first objection is rather suggested than urged by the Venezuelan Government. Nevertheless, as touching the jurisdiction of the Commission over the claim, it must be fully considered. The record shows that upon her arrival at Maracaibo the *Alliance* was carrying the Dominican flag; that she had a Dominican registry, based upon a showing that Carlos A. Mota, a citizen of San Domingo, had proved that he was the lawful owner of the Dominican steamer *Alliance*, and as such owner had furnished the bond required by law; that this registry had been obtained with the knowledge and by the connivance of Smith through his agent and representative at San Domingo, Jaimo Mota.

But, whatever may have been the morality of this proceeding, it is not conclusive against the American ownership of the vessel.

The registry or enrollment or other custom-house document is *prima facie* evidence only as to the ownership of a ship in some cases, but conclusive in none. The law even concedes the possibility of the registry or enrollment existing in the name of one person while the property is really in another. Property in a ship is a matter in pais to be proved as fact by competent testimony like any other fact. (Wharton Int. L. Dig., sec. 410, citing U. S. v. Pirates, 5 Wheaton, 187; U. S. v. Amedy, 11 Wheaton, 409, and other cases.)

If as a matter of fact the *Alliance* was owned by a citizen of the United States, she was American property and possessed of all the general rights of any property of an American. (Ibid.)

The evidence of ownership is to the effect that the *Alliance* was built for L. B. Smith at Curaçao by Felipe Santiago as shown by the builder's certificate; that the Dominican registry was secured in order to enable the vessel to trade along the Dominican coast; that Carlos A. Mota never acquired any real interest in the ship, his title being purely nominal; that the vessel actually continued to be the sole property of L. B. Smith, and that at the close of the investigation by the Venezuelan court she was returned to Mr. Smith's possession.

The second objection interposed by the Government of Venezuela to this claim is succinctly stated in the following paragraph of the reply of the minister of foreign relations:

The steamer *Alliance* was detained by the captain of the port in accordance with a provision of the fiscal code which the authorities deemed applicable to the case in view of the manner in which the ship arrived. A ship which enters the waters where a State has jurisdiction can not, if it is a merchant ship, be exempt from the disposition and rules in regard to territorial jurisdiction. Fiore recognizes this in his celebrated work, *Nouveau Droit International Public* No. 815, and Calvo is explicit on this point No. 451. F. de Martens in his recent *Treatise on International Law* is even more categorical when he states (Vol. II, No. 56) that the merchant ships anchored in a port or the waters of a foreign State are subject to the laws and local authorities. The steamer *Alliance*, even though it may have arrived in distress, entered the territory where Venezuelan legislation was in force.

The minister argues that the authorities of the port would have been grossly derelict in their duty if they had not instituted the process and detained the vessel, and that no claim can be sustained for losses growing out of the necessary and proper observance of the local law.

With due respect, however, the vital question presented here is whether the *Alliance*, although within Venezuelan waters was, under all the circumstances, subject to the laws and local authorities. There

can hardly be any doubt that the ship arrived at the bar of Maracaibo in great distress. Her condition at the time is graphically described in the testimony of the pilot, Epitasio Rios, quoted herein. Furthermore she bore with her upon her arrival in port the following pass from the commander of the fortress of San Carlos:

JUNE 21, 1897.

Allowed to go to Maracaibo, having made forcible arrival on account of lack of coal and provisions.

The commander in chief of the port:

MANUEL PAREJO.

Under these conditions the exemption of the *Alliance* from territorial jurisdiction is clear. The identical question here involved was considered in the case of the brig *Enterprise*, decided by the American and British Claims Commission of 1855.

The Commissioners, although disagreeing on other grounds, were unanimous upon the proposition that, as a general rule—

A vessel driven by stress of weather into a foreign port is not subject to the application of the local laws, so as to render the vessel liable to penalties which would be incurred by having voluntarily come within the local jurisdiction. The reason of this rule is obvious. It would be a manifest injustice to punish foreigners for a breach of certain local laws unintentionally committed by them, and by reason of circumstances over which they had no control.

In the case of *The Gertrude* (3 Story's Rep., 68) Mr. Justice Story says:

It can only be a people who have made but little progress in civilization that would not permit foreign vessels to seek safety in their ports when driven there by stress of weather, except under the charge of paying import duties on their cargoes, or on penalty of confiscation where the cargo consisted of prohibited goods.

Nor did the laws of Venezuela impose upon the authorities of the port any duty contrary to the principles of civilized jurisprudence or the dictates of humanity and hospitality. Law XXIV of the Finance Code in force at the date of the arrival of the *Alliance*, and which is the same as Chapter XXV of the existing code, provides in its first article that—

the formalities prescribed by the law for the entrance of vessels coming from a foreign country into the ports of the Republic shall not be enforced in cases of forcible arrivals which are the following: Damages on board; sickness of the crew, whether contagious or not, and acts of God absolutely preventing to proceed on the voyage.

Articles 2, 7, and 8 of the same law prescribes the formalities that must be pursued by the administrative authorities of the port to obtain the proofs of the real causes of the arrival and to assist the vessel, passengers, and cargo with all necessary means of protection and security during the enforced stay of the ship in port on account of repairs or other reasons in connection with the forcible arrival. Article 16 orders that "once finished the motives of the forcible arrival, the administrator of the custom-house shall deliver the license of navigation and other papers to the captain, giving him two hours to sail out;" and article 17 provides that "in cases where the cause of forcible arrival is not proved, any ship coming from a foreign port and found to be anchored, without any justifiable reasons in a port for which it was not cleared, shall be liable to the penalties prescribed by Law XX of said code."

Only in the cases where the cause of forcible arrival is not proved and a ship is found to be anchored in a port without any justifiable reasons, is it the duty of the administrator of the custom-house, in

conformity with article 17 above quoted, to pass all documents to the judge of finance in order to initiate the corresponding trial?

In view of the evidence of the pilot Rios, the wording of the pass given by the commander of San Carlos, the disabled condition of the vessel, and the testimony of the crew which must have been taken by the captain of the port as required by law, can it be said that the cause of the forcible arrival of the *Alliance* was not proved or that she was anchored in the port of Maracaibo without any justifiable reasons? And if not, there was no probable cause under the law of the country for the action of the port authorities and the subsequent judicial proceedings. The liability of the Government of Venezuela for the ascertainable loss or injuries resulting from the seizure and detention of the *Alliance* is both upon reason and authority established.

The claim is believed to be considerably exaggerated. The board of survey which examined the steamer upon her arrival at Curacao on January 15, 1898, estimated "the complete repairs of said boat at the amount of \$2,000, so as to make her seaworthy." But it is to be remembered that the *Alliance* arrived in port at Maracaibo in a battered and disabled condition. Large sums of money are alleged to have been expended by claimants' intestate because of the seizure, but no vouchers therefor are put in evidence, although the claim was made within two months after the return of the ship to her owner.

An award will be made in this claim for the sum of \$2,500 United States gold, with interest at 3 per cent per annum from April 15, 1898, the date of the presentation of the claim to the Venezuelan Government, to December 31, 1903, the anticipated date of the final award by this Commission.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of the legal representatives of Leonard B. Smith, deceased, claimants, against the Republic of Venezuela, No. 8, the sum of two thousand nine hundred twenty-eight and 33/100 dollars (\$2,928.33) in United States gold coin is hereby awarded in favor of said claimants, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTÁRIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered July 14, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of A. T. Stubbs, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 9.
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BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of A. T. Stubbs for damages for a malicious destruction of property.

The facts, as stated in a memorial presented to the Department of State of the United States on December 29, 1879, are very brief, and are to the effect that a rabble, headed by some of the port and custom-house officers, boarded the claimant's schooner, the *Jennie A. Stubbs*, in the port of Maracaibo, overhauled the vessel, and took ashore nearly all the small stores on board. Claimant immediately reported the matter to the United States consul, who, together with claimant's merchants and the claimant himself, applied to the Venezuelan authorities at the port for redress, but they refused either to interfere or render any satisfaction in the matter.

There does not appear to have been any cause assigned for this wanton outrage. As its result claimant was compelled to replace his stores in a foreign port at a greatly advanced price.

The claim, originally made at \$500, has been reduced by the claimant, by a letter of April 28, 1903, to the sum of \$100, covering only the actual cost of the stores taken and destroyed.

There can be, we think, no question that the Venezuelan Government is liable for damages in this case. The rule of international law as to liability of a government under such circumstances is well settled to depend upon two primary conditions: First, that the wrong was done under direct authority from the government; second, upon the attention of the proper officers being called to the matter, the government took no steps to prevent or punish the wrong. These principles are found laid down upon a full discussion of the authorities in Moore's *International Arbitrations*, volume 3, pages 2952 and 2953 and 3023 and 3024. The reasons assigned by Mr. Finlay in the case of the *Horatio*, on page 3024, above, for refusing an award because the matter was not called to the attention of the Venezuelan authorities, draw clearly the distinction upon which, under the facts in this case, an award should be made. Here the evidence is that the matter was immediately called to the attention of the Venezuelan authorities, and they refused to act at a time when the wrong could have been prevented or at least righted by the restoration of property.

No exorbitant claim is made; simply a claim for the actual loss, and an award in this amount, with interest, should be made. Interest should, we think, be allowed in this case, because the matter was immediately brought to the attention of the Government of the United States by the claimant, and there has been since that time no arbitration commission empowered to adjudicate the claim until the present. The powers of the commission appointed under the act of 1885 were so clearly limited to the reconsideration of cases determined by the former Caracas commission that we need not discuss the question of want of power of the commission which met in 1890 to have disposed of this

claim. Interest should be allowed from the 29th of December, 1879, which amounts to \$170.25.

Respectfully submitted.

ROBERT C. MORRIS, *Agent of the United States.*

[Translation.]

No. 9.

To the honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied the claim presented by the American citizen A. T. Stubbs for damages caused to his property, and observes:

1. That the facts upon which the claim is founded have been established by no sort of proof, and that in this regard there only exists the simple affirmation of the claimant made without oath.

2. That the protest which the claimant alleges to have made before the United States consul on the date of the acts is not produced.

3. That the name of the port where the claimant renewed his provisions, and the kind and quality of them, are not mentioned—circumstances which are all necessary in order to determine the reason for the high price which he demands for them.

4. That the Department of State of the United States has never presented this claim to the Venezuelan foreign office, which evidently proves that it does not consider it well founded.

5. That in case it were certain that the Venezuelan authorities committed the injury, which is denied, it is not proved that they proceeded in their public character—a requisite which international law requires in order to establish the responsibility of the Government.

As is seen, therefore, this claim is deficient, not only with respect to the proof of the facts, but also in the appreciation of the law.

Caracas, June 27, 1903.

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of A. T. Stubbs, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 9.
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DECISION.

The evidence presented in support of this claim being insufficient to establish any liability on the part of the Government of Venezuela for the loss complained of, the claim is hereby disallowed.

WILLIAM E. BAINBRIDGE,

Commissioner on the part of the United States of America.

J. DE J. PAÚL,

Commissioner on the part of Venezuela.

Attest to decision.

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,

Secretary on the part of Venezuela.

RUDOLF DOLGE,

Secretary on the part of the United States of America.

Delivered July 10, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of J. S. Emery & Co., owner of the schooner <i>Mark Gray</i> , claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 10.
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BRIEF ON BEHALF OF THE UNITED STATES.

The United States in this case presents the claim of J. S. Emery & Co., owner of the schooner *Mark Gray*, for damages amounting to \$1,537.50 and interest to the amount of \$338.25.

The facts of the case upon which the liability on the part of the Venezuelan Government is predicated are briefly as follows:

The American schooner *Mark Gray* arrived at the port of Maracaibo on December 11, 1895, with a cargo consigned to Andres Roncayolo, under a charter party by which the charterers were to pay the port charges, including towage.

The vessel was unloaded and ready to depart to sea on December 30, but was unable to leave through inability to obtain a tug to tow her out to sea, the tugs at the port having at that time, as appears from the documentary evidence, been taken by the Venezuelan Government. This state of facts continued, the vessel lying in the harbor until the 17th of February, 1896, when, at risk of destruction, she succeeded in leaving the port by sailing over the bar, having still been unable to obtain the services of a tug.

The liability of the Venezuelan Government is claimed because of the fact that the Venezuelan Government had granted a monopoly of the towing business at this port, and that no other vessel could be used for this purpose than the tugs of the company having this monopoly. This company was prevented from rendering the service in this case by the fact that the Government was at that time using the tugs for its own purposes. The schooner was, therefore, by force of Venezuelan law, compelled to wait the pleasure of the Government in returning the tugboat. After waiting fifty days, as there seemed to be no probability that any relief would be obtained from the Venezuelan authorities, the vessel put to sea without the services of a tug.

A proper protest was filed on January 27, calling this matter to the attention of the Venezuelan Government.

We think there can be no question that the Venezuelan Government has made itself directly responsible for the demurrage and loss in this case, by granting the towage monopoly and then itself preventing the towage company from rendering the service, it directly caused the injury which has resulted. There can be no question that a government is liable to foreign citizens for injuries which arise from the direct act of the government. As illustrating the principles upon which this claim should be decided, we refer the Commission to the opinion of the former Venezuelan commission in the case of the brig *Horatio*, reported page 37 et seq. of the opinions of that commission. The analogy of the principles there announced clearly sustain the right of the claimant in this case. The question in that case was a question

of going to sea without a pilot, here without a tugboat. The principle is the same, the requirements of the Venezuelan law being similar.

It was held in the case of the brig *Horatio* that having attempted to go to sea without a pilot, she could not recover for the consequent loss of the vessel, and that not having called the attention of the Government to the refusal of the pilot to act, the Government was not responsible for not having furnished a pilot. The claimant in this case took exactly the course which this opinion of the former Venezuelan commission indicates to be essential. The schooner was held fifty days for a tugboat, and the attention of the Government was properly called by a protest to the fact that no tugboat was furnished. Under the reasoning of the former commission, it was the duty of the Venezuelan Government, as a result of the provision of this law rendering a tugboat essential, to see that this service was rendered when the matter was called to its attention, as was done in this case. The facts of this case showing that it was because of acts of the Government itself in taking away the tugboats that the service could not be rendered only increase the liability of the Venezuelan Government for the injury.

We submit that an award should be made for the amount claimed, with interest from the time the case was called to the attention of the Venezuelan authorities, in January, 1896.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

No. 10.

The honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has entered into the study of the claim presented by the American citizens John S. Emery & Co., and as a result of his study shows:

The authority of the Government of Venezuela to contract for the sort of service which is monopolized by the company referred to by the claimants is indisputable. If this company failed in the duties which it had contracted with the public, responsibility therefor can be attached solely and exclusively to it, which responsibility can not, even collaterally, be admitted on the part of the Government. Even in case that this latter had deprived the said company of the means of complying with the contractual obligations, which is not proven, the resulting consequences of this act could not operate except against the company itself, which as the contracting party is the only one capable of exercising the rights derived from the contract.

The claimants ought, therefore, to have recourse against the company and in no way against the Government, to whom they are bound by no judicial relation.

Therefore, the claim is inadmissible and judgment should be rendered accordingly.

Caracas, June 27, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of J. S. Emery & Co., owner of the schooner <i>Mark Gray</i> , claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 10.
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REPLICATION ON BEHALF OF THE UNITED STATES.

In the answer in this case the Republic of Venezuela assumes the position that, while the Government of Venezuela had complete authority to contract for the kind of service monopolized by the company to which it had granted the right to operate a towboat at the bar of Maracaibo—even though by the act of the Government the company was rendered incapable of affording its usual service—the Government was not responsible, and that the company alone should be held for any damages which accrued to the claimants in this matter.

The United States takes the ground that the Venezuelan Government, having by its act of interference taken possession of this monopoly, as is clearly evidenced by the letter of A. Roncayolo, contained in the protest of W. A. Sawyer, master of the schooner *Mark Gray*, to the United States consul at Maracaibo, and also by the other evidence submitted by putting in commission, for the Government service, the single tugboat operated by the company, assumed the duties of the company and became responsible for the damages to the claimant, and that it can not take shelter behind the theory that the claimants should look to the company for damages.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of J. S. Emery & Co., claimants, v. THE REPUBLIC OF VENEZUELA.	}	The <i>Mark Gray</i> , No. 10.
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DECISION.

Opinion by Bainbridge, Commissioner.
The Commission disallows the claim.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of J. S. Emery & Co., claimants, v. THE REPUBLIC OF VENEZUELA.	}	The <i>Mark Gray</i> , No. 10.
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BAINBRIDGE, *Commissioner.*

The United States presents the claim of J. S. Emery & Co., managing owners of the American schooner *Mark Gray*, against the Republic of Venezuela in the sum of \$1,537.50, and interest amounting to \$338.25.

The *Mark Gray*, W. A. Sawyer, master, was chartered on October 15, 1895, by Messrs. Kunhardt & Co. to carry a cargo of railroad material from New York to Maracaibo, Venezuela. The charterers agreed to pay all vessels' port charges at Maracaibo, including pilotage, lighterage, consul fees, interpreters' fees, etc., and towage over the bar, and demurrage, beyond the lay days for loading and discharging cargo, at the rate of \$30 per day for every day's detention by default of the charterers.

The schooner arrived at Maracaibo on December 11, 1895, finished discharging her cargo on the 28th, and could have left port two days later had she been able to obtain towage; but in the absence of any towboat in the port the vessel was delayed at Maracaibo until February 17, 1896, when she finally got to sea by resorting to the unusual custom of sailing over the bar. When Captain Sawyer, after discharging cargo, inquired of the consignees and the towing agents for a tug, he was informed that the towboat was away in the service of the Government, and that no definite information could be given as to when she would return.

On January 18, 1896, the captain wrote to Mr. A. Roncayolo, the charterers' agent at Maracaibo, as follows:

SIR: I beg to call your attention to the fact that for several days past the schooner *Mark Gray*, under my command, has been ready for sea, but has been unable to leave for lack of towage. I must appeal to you as consignee of said vessel in this port and as agent of the charterers, Messrs. Kunhardt & Co., of New York, to furnish me with towage as provided for in my charter party. The agreement respecting towage in the charter party is as binding as that providing for the payment of freight or any other consideration specified in that document, and the charterers of the vessel are not to be considered as having complied with their obligations until said vessel shall have been towed over the bar. I beg to call your attention, as charterers' agent, to these facts, protesting at the same time against the injury to the vessel's interests caused by this delay.

(Signed) W. A. SAWYER,
Master, American Schooner *Mark Gray*.

On January 27, 1896, Captain Sawyer made formal protest, before the United States consul at Maracaibo, "against the charterers, Messrs. Kunhardt & Co., of New York, against the contractor for towage at Maracaibo, against the Government of Venezuela, and against all and every person and persons whom it may or doth concern, and against all and every accident, matter, and thing, had and met with as aforesaid, whereby and by reason whereof the said schooner, or her interests, shall appear to have suffered or sustained damage or injury."

It appears from the record that the Venezuelan Government had granted a monopoly of the business of towing vessels across the bar at Maracaibo, and that the grantee of the privilege used in that business but one tugboat, which, at the time its services were required by the *Mark Gray*, was employed in the service of the Government itself.

The learned counsel for the United States urges on behalf of the claimants that the Venezuelan Government has made itself directly responsible for the demurrage and loss in this case, by granting the towage monopoly and then preventing the towage company from rendering the service by taking for the Government's own use the single tugboat operated by the company.

But the right of the Government of Venezuela to grant the franchise in question, by virtue of its proprietary interest in and exclusive jurisdiction over its territorial waters, is indisputable. And it is difficult to perceive wherein the Government, by making the grant, assumed any liability for the acts or omissions of the grantee. If such liability

arises from the terms of the grant, that fact does not appear in evidence before the Commission. The protest of Captain Sawyer states "that according to the agreement made by the contractor for towage with the Government of Venezuela, the said contractor is bound to keep tugs constantly ready for service at the Maracaibo bar." A showing that the contractor did not keep tugs constantly at the bar is rather proof of his failure to observe his agreement with the Government, than of the Government's liability to those who may have suffered from such failure, which is the claim made here.

Nor does the fact that the Government was employing in its service the only tugboat used by the contractor for towage fix a liability upon Venezuela for losses sustained by those who were unable, because of its employment by the Government, to secure the service of the tug. That circumstance may indeed have occasioned a loss to the claimants; but, if so, it was not injuriously brought about by any violation of their legal rights and is *damnum absque injuria*.

The claim must be disallowed.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

DECISION.

In re the claim of the United States of America on behalf J. S. Emery & Co., owners of the schooner *Mark Gray*, claimants, against the Republic of Venezuela, No. 10, the evidence presented in support of said claim being insufficient to establish any liability on the part of the Government of Venezuela for the loss or injury complained of, the claim is hereby disallowed.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered July 17, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of the American and Electric Manufacturing Company, claimant,	} No. 11.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of the American and Electric Manufacturing Company, a corporation of the United

States, organized under the laws of the State of Virginia, and having its principal place of business at Washington, D. C., for damages for injuries to its telephone plant in the city of Bolivar, in the Republic of Venezuela.

The facts as they appear from the memorial and accompanying affidavits show three separate sources of injury to this company: First, during the revolution in May, 1901, the city of Bolivar was besieged by the revolutionists. Previous to the attack the military authorities of the present Government took possession of the telephone plant, allowing the use of its wires only for military purposes, causing many of the subscribers to cancel their subscriptions and withdraw their support to the business of the company.

Second. During the battle which took place in May, 1901, and which resulted in the capture of the city of Bolivar by the revolutionists, a large number of the wires and poles and other property belonging to the company were destroyed by the revolutionists. For the injuries occasioned by these two causes, the claimants make a claim for \$4,000.

Third. Subsequently the property and plant of the claimant was again damaged and injured to the extent of \$2,000 during the bombardment of the city of Bolivar by the ships of the Government navy, in August, 1902.

The affidavits submitted with the memorial sufficiently support the claim as to the fact of the injury and resultant damage on its account. The question presented by this case is one of the liability of the Venezuelan Government for the damage which has resulted, or a part thereof.

As to the injuries classed under the first and second heads above, there can be under the decisions of arbitration commissions in similar cases, and the well-established principles of international law applicable thereto, no doubt as to the liability of the Government of Venezuela for the \$4,000 damages claimed in this respect. This telephone plant was taken possession of by the present Government of Venezuela for military use. While in such possession of the Government, it was injured and partially destroyed by the insurgent forces. A government is liable for property of which it takes possession for military purposes, and for the injury or destruction of property while in its possession. This principle is clearly established. See the cases collected in the fourth volume of Moore's International Arbitrations, page 3714 et seq., and especially the case of Putegnats heirs, at pages 3718 to 3720, in which an award was made for claimants for property which had been taken possession of by the Government forces, and, subsequently, while in its possession, destroyed by the forces of the enemy.

There can be no question but that the claimants are entitled to an award for the \$4,000 damage claimed for injuries to property while in the possession of the Government in May, 1902.

As to the claim for injuries arising from the shelling of the city of Bolivar by the naval forces of the Government in August, 1902, such injuries were probably necessarily incident to the state of warfare existing at that time. Interest should be allowed at the legal rate of 3 per cent from May 26, 1902, to June 1, 1903.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

No. 11.

ANSWER.

To the honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the United States of Venezuela, has read the proofs of the claim which the American and Electric Manufacturing Company, a corporation organized according to the laws of the State of Virginia, and which has in Washington its principal place of business and interest, has presented to this honorable Commission.

This claim arises out of damages and injuries caused the telephone plant which the said company owns in the city of Bolívar:

1. By an order of the Government of the State prohibiting for some time telephonic communication among the subscribers.

2. Because of destruction suffered during the bombardment of said city by the navy of the Government in August, 1902.

With respect to the first point it is necessary to consider that at the date of the occurrences the country was in a state of civil war, and that the course ordered by the Government of the State, necessitated by the circumstances of the moment and in exercise of the public authority with which it was invested, was justified by the law of nations. (See Fiore, Public International Law, vol. 1, p. 583.)

Upon this point it is necessary to remember that, as is shown by the confession itself of the claimants, the measure adopted by the officials did not last more than two days—a time which could not suffice to cause the damage they pretend to have suffered.

With respect to the second point it is necessary to take into consideration that the city of Bolívar was in the power of military forces who had betrayed their trust and rebelled against the legitimately constituted Government. The latter, therefore, was obliged to suppress the disorder and preserve the interests of the State. In similar cases it is a principle of international law—

that the responsibility of governments for damages suffered by foreigners can not be more extensive than that which would accrue to foreign governments with respect to their own nationals, because the duties of hospitality are not sufficiently imperative to limit the full exercise of sovereignty, and that it can not be admitted that a sovereign who finds himself obliged to retake a city occupied by resisting rebels is obliged to indemnify foreigners who may have suffered in their interests by the attack made upon the city. The foreigner who establishes himself in a country accepts in advance and voluntarily the eventual dangers to which said country may be exposed, and thus, as he participates in the advantages of the nationals themselves, so also he should resign himself to participate in their misfortunes. Foreign and civil war clearly come within the category of these eventualities. (See the note of Count Nesselrode to Baron de Brünon, diplomatic agent of Russia at London, of May 2, 1850.)

In conformity with the doctrine set forth, the claim is inadmissible and ought therefore to be declared as unfounded.

Caracas, 29 June, 1903.

(Signed)

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of The American Electric and Manufacturing Company, claimant,	} No. 11.
v.	
THE REPUBLIC OF VENEZUELA.	

DECISION AND AWARD.

Opinion by Doctor Paúl, Commissioner.

The Commission awards to the claimant the sum of \$2,000 United States gold.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of The American Electric and Manufacturing Company, claimant,	} No. 11.
v.	
THE REPUBLIC OF VENEZUELA.	

Doctor PAÚL, *Commissioner*:

The claim of the "American Electric and Manufacturing Company" against the Venezuelan Government is based on two distinct groups of facts. The first is the taking possession of by the Government of the State of Bolívar, on May 26, 1901, of the telephone office and service of the line for the use and convenience of the military operations during the battle, which took place in Ciudad Bolívar, until the 29th of said month, against revolutionary troops, and the damages which the property so occupied suffered in consequence thereof, owing to acts of destruction performed by the revolutionists. The amount claimed for such damages is the sum of \$4,000.

The second group of facts consists in the damages suffered by the telephonic line in August, 1902, during the bombardment of Ciudad Bolívar, by the vessels of the Venezuelan Government; the claim on this account being for \$2,000.

By the documentary evidence presented it is proven that when the loyal troops of the Government were fighting the rebels of Ciudad Bolívar General Julio Sarris, constitutional President of the State ordered the absolute interruption of all the telephonic service with the exception of the instruments which connected the house of said general with the military commander, the administrator of the custom-house, the marine customs office, the police inspector's office, the telegraph office, and such other places stated in the note which he sent to Mr. Eugenio Barletta, manager of the company, dated May 26, 1901, and ordered also the occupation of the central office of the company, and stationed near the machinery an armed guard, which remained there until the town was evacuated by the Government's troops.

It is also proven that the revolutionary forces destroyed the posts and wires of the lines and caused damages in the central office, destroying the switch boards and forcing the employees to abandon the office.

The general principles of international law which establish the nonresponsibility of the Government for damages suffered by neutrals' property, owing to imperious necessities of military operations within the radius of said operations or as a consequence of the damages of a battle incidentally caused by the means of destruction employed in the war, which are not disapproved by the law of nations, are well known.

Nevertheless the said principles likewise have their limitations according to circumstances established by international law as a source of responsibility, when the destruction of the neutral property is due to the previous and deliberate occupation by the Government for public benefit or as being essential for the success of military operations. Then the neutral property has been destroyed or damaged by the enemy because it was occupied by the Government troops, and for that reason only.

It is the seizure of private property for the public use and the loss or destruction while so employed, whether by the enemy or the Government, that entitles the owner to payment, even if it be morally certain that the enemy would himself take the property and use it, depriving the owner of it forever; still its destruction by the Government entitles the party to compensation. We must hold, even in such case, that the public has received the value of the property by embarrassing its enemy through such destruction, and is therefore bound to make just compensation. It would in no case be just that the loss should fall exclusively on one man where the property has been lawfully used or destroyed for the benefit of all. (*Putegnet's Heirs v. Mexico*, 4 Moore Int. Arb., 3718.)

The seizure of the office and telephonic apparatus by the Government of Ciudad Bolívar, required as an element for the successful operations against the enemy, and the damages suffered and done by the revolutionists as a consequence of such seizure gives to the American Electric and Manufacturing Company the right to a just compensation for the damages suffered on account of the Government's action.

The claimant company, exhibiting evidence of witnesses, pretends that the damages caused amount to the sum of \$4,000, but it must be taken into consideration that the witnesses and the company itself refer to all the damages suffered by the telephonic enterprise from the commencement of the battle which began on the 23d of May, while the seizure of the telephonic line by the Government, which is the motive justifying the recognition of the damages, only took place on the 26th, which reduces in a notable manner the amount for damages which has to be compensated by the Government, and therefore the damage is held to be estimated in the sum of \$2,000.

With reference to the second section of the claim, for the sum of \$2,000 for damages suffered by the telephonic company during the bombardment of Ciudad Bolívar in August, 1902, this being the incidental and necessary consequences of a legitimate act of war on the part of the Government's men-of-war, it is therefore disallowed.

No interest is allowed, for the reason that the claim was never officially presented to the Venezuelan Government.

In consequence thereof an award is made in favor of the American Electric and Manufacturing Company, for its claim against the Venezuelan Government, in the sum of \$2,000 American gold.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

AWARD.

In re the claim of the United States of America, on behalf of the American Electric and Manufacturing Company, claimant, against the Republic of Venezuela, No. 11, the sum of two thousand dollars (\$2,000) in United States gold coin is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRÓN UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered July 21, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Isaac J. Lasry, a naturalized citizen of the United States,	} No. 12.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of Isaac J. Lasry for damages in the sum of \$15,880.

The facts of the case, as appears from the memorials and affidavits of Mr. Lasry, and from the sworn affidavits of various witnesses to the transactions, are that the property of Mr. Lasry, his plantation and store at the city of Belen, were destroyed by the troops of the present Government while passing through the city and under the command of their officers, and that their officers and commanders, although necessarily having the means of preventing the outrage, made no efforts whatever to prevent it. This injury was not occasioned through the conduct of any military operations and can in no sense be said to be a necessary or inevitable hazard of war, but it was a wanton injury committed without necessity by the troops of the Government,

either under the direction or by the permission of their officers, at least without any attempt on the part of the commanding officers to prevent it, and under circumstances where their authority and acquiescence must be presumed, or where at least they did nothing to prevent it, with full opportunity to have done so.

The evidence shows the value of the cattle, merchandise, and horses destroyed and cash taken to be \$15,880. The facts are fully borne out by the accompanying affidavits.

There can be no question as to the liability of the Government of Venezuela in such a case. (See the decision of the Chilean Claims Commission under the treaty of August 7, 1892, at pages 3711-3712, of the fourth volume of Moore's International Arbitrations, and the authorities there cited.)

The principle there laid down is:

Neutral property destroyed or taken by soldiers of a belligerent with authorization or in presence of their officers or commanders, gives a right to compensation whenever the fact can be proved that said officers or commanders had the means of preventing the outrage and did not make the necessary efforts to prevent it.

There can be no doubt that under the application of this principle to the facts of this case the Government of Venezuela is liable for the injury done.

An award should be made in favor of the claimant for the full amount claimed.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

No. 12.

ANSWER.

To the honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has considered the claim presented by the American citizen, Isaac J. Lasry, and respectfully calls the attention of the Commission to the following:

The present claim arises out of damages sustained in the properties of the claimant, situated in a little town or village of the State of Carabobo, of about 500 souls. The mere consideration of the place suffices to prove the exaggeration of the claim.

The facts upon which it is founded are not proved, as the common law requires, since the witnesses have limited themselves to signing a joint declaration, not under oath, and before an official who had no authorization to receive it.

The rules of international law generally admitted by all publicists for establishing the responsibility of governments in similar cases are the following:

1. That the acts which cause the injury to foreign citizens have been committed by the regular forces of the respective governments, when the personal responsibility of the officers of said forces is not enforceable.

2. That such acts were not the immediate and necessary consequence of operations of war.

The proof offered does not establish in any way the culpability of the officials of the Government, nor the extent of the injuries suffered. The claim, therefore, is inadmissible, and ought to be so declared.

Caracas, June 29, 1903.

(Signed) F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

UNITED STATES OF AMERICA ON BEHALF of Isaac J. Lasry, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 12.
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DECISION AND AWARD.

Opinion by Bainbridge, Commissioner.

The Commission awards to the claimant the sum of \$2,000 United States gold.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Isaac J. Lasry, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 12.
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BAINBRIDGE, *Commissioner*.

This claim is submitted upon the following documents:

First. Two letters of claimant, both dated May 16, 1901, addressed to the Department of State, in which he sets forth that he is a naturalized citizen of the United States domiciled in Venezuela; that on November 11, 1899, the troops of General Colmenares, a detachment of General Castro's army, entered Belen, where claimant resided and was engaged in business as a merchant and farmer, took away his cattle and horses and looted the better part of the goods and provisions in his business establishment, and he summarizes his alleged losses as follows:

29 head of cattle, at \$20 gold per head	\$580
Merchandise	15,000
2 saddle horses, at \$125 gold each	250
Cash	50
Total gold	15,880

Second. A statement signed by various parties claiming to be residents of Belen before the jefe civil of the parish to the effect that on the 11th day of November, 1899, the cattle Mr. Lasry had in his pasture were taken by the forces of General Colmenares, and that the better part of the goods stored in his establishment was looted by said forces; and, furthermore, that Mr. Lasry had always attended to his business without mixing himself in the politics of the country, or in anything else which could affect his condition as a neutral tradesman.

Third. A statement signed on October 3, 1901, by J. Benody and J. A. Parmente, in the presence of the secretary of the United States legation at Caracas, to the effect that Isaac J. Lasry was, during the revolution existing in Venezuela in November, 1899, practically ruined by the sackage of his mercantile house established at Belen, a village in the State of Carabobo, and the confiscation of all his material goods, such as money, beasts, and cattle, by the forces of the Government of Venezuela.

Fourth. Copy of certificate of naturalization of Isaac J. Lasry in the court of common pleas for the city and county of New York on October 26, 1893, and copy of passport issued to Isaac J. Lasry on March 22, 1898, by the United States legation at Caracas.

It is to be observed that no legally competent evidence under the rules of municipal law is here presented, either as to the fact or amount of the alleged loss. The learned counsel for Venezuela urges that the facts upon which the claim is founded are not proved as the common law requires, and that it should therefore be disallowed.

Article II of the protocol constituting this Commission provides:

The Commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective governments.

The Commission, then, is not limited in the adjudication of the claims submitted to it to only such evidence as may be competent under the technical rules of the common law, but may also investigate and decide claims upon information furnished by or on behalf of the respective governments. It has indeed been found impossible in proceedings of this character to adhere to strict judicial rules of evidence. Legal testimony presented under the sanction of an oath administered by competent authority will undoubtedly be accorded greater weight than unsworn statements contained in letters, informal declarations, etc., but the latter are under the protocol entitled to admission and such consideration as they may seem to deserve.

The information furnished as to this particular claim is both meager and unsatisfactory. The statement of the claimant, that he suffered some loss, and the manner thereof, is corroborated by the declarations of various residents of Belen; but none of the latter give an estimate of the amount of the loss sustained by Mr. Lasry. Belen is referred to by the declarants as a little town or village in the State of Carabobo. Lasry states that "the better part" of his stock of merchandise was taken by the soldiery, and he gives the value of the part taken as \$15,000 gold—manifestly an exaggeration.

The Commissioners, regarding the fact as shown that Lasry sustained some loss, but unable to accept his uncorroborated estimate of the value of the property taken, have agreed to make an allowance in this claim of the sum of \$2,000, without interest, as being, under all the circumstances, the nearest approach possible to an equitable determination.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of Isaac J. Lasry, claimant, against the Republic of Venezuela, No. 12, the sum of \$2,000 in United States gold coin is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTÁRIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered July 21, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Elias Assad Flutie, claimant,	} No. 13.
v.	
THE REPUBLIC OF VENEZUELA.	

BRIEF ON BEHALF OF THE UNITED STATES.

I.

STATEMENT OF FACTS.

The United States presents in this case the claim of Elias Assad Flutie for damages in the sum of \$80,000.

Mr. Flutie is a naturalized citizen of the United States, having been naturalized on the 2d day of July, 1900, at the district court of the United States of America for the eastern district of New York. Claimant has for some time been operating a general store in the city of Yrapa, in the Republic of Venezuela. His claim is for forced loans, destruction of property, false arrests, and ill treatment in connection therewith, received partially at the hands of the Government troops and partially at the hands of the insurgents, between September, 1900, and March, 1902. The facts set forth in the memorial show that the claimant was visited at various times by Government officers, primarily

to make forced loans of money, which were in many cases obtained. That because of claimant's refusal to submit to such forced loans, his store was raided on repeated occasions, he himself was repeatedly arrested and lodged in jail and kept for indefinite periods, and released only upon his consenting to make the demanded forced loans, or when the officers of the Government had in the meantime succeeded in obtaining from his store such goods and money as they demanded. The memorial states seventeen specific instances of such illegal acts on the part of the officers of the present Government; it also states seven similar unlawful acts on the part of the revolutionary officers.

The facts in this case are amply supported in every detail by not only the sworn memorial and its accompanying exhibits, but also by the testimony of Mr. Abraham Flutie, Mrs. Emelia A. Flutie, Elias A. Flutie, the complainant himself, and Julian A. Flutie. The evidence clearly shows that the acts complained of as acts of the Government officials were acts done by or under direct authorization of the military officials of the Venezuelan Government of a rank such as to make the Government responsible for their acts. The evidence also clearly shows that the unlawful acts of the revolutionary soldiers complained of were done under circumstances where the property could have been amply protected by the Government forces and authorities, but that they took no action whatsoever to render that protection.

The evidence is also clear that the value of the property taken and of money obtained by such forced loans was at least the sum of \$30,000 demanded in this respect, the remainder of the claim being for personal injuries and indignities suffered by the claimant.

II.

The Government of Venezuela is clearly liable for the wrongs complained of, done by the military and other officials of the Venezuelan Government.

There can be no question, as a matter of international law, that the Government of Venezuela is responsible for the damages to property and for the personal injuries which claimant has suffered in this case.

The claim consists in the first place of a large number of forced loans. The rule of international law is clear that a government is responsible for the repayment of moneys obtained by such forced loans upon foreigners, except in the single instance of where the loan was simply a general imposition upon all the inhabitants of a particular district, which was not the case in this instance. The authorities stating the right to recover for such forced loans are clear. (See the decided cases before similar commissions, Moore's International Arbitrations, vol. 4, pp. 3409 to 3424.)

The rule of international law is equally clear as to property taken, whether it be regarded as property taken for the use of the Government, or as property destroyed by the Government troops. So far as this property was taken for the use of the Government troops, as it appears most of it must have been, the right of recovery is clearly sustained by the decided cases. (See 4th Moore's International Arbitrations, p. 3714 et seq.) So far as the claim may refer to property destroyed, it is clear that it was destroyed either with the authority

or in the presence of commanding officials who had the means, but did nothing to prevent the outrage. These facts give the claimant a right to compensation. (See the opinion of the Chilean Claims Commission as set forth in the fourth volume of Moore's International Arbitrations, pp. 3711 to 3712.) It is equally clear that the Venezuelan Government is liable to respond in damages for the illegal arrests and unlawful detentions of the claimant in jail, as well as for the personal indignities and hardships which he was forced to undergo. These arrests seem to have been wholly without cause, unless a refusal to consent to the forced loans or to the practical confiscation of his property be regarded as a sufficient cause for an arrest. All the arrests were moreover accompanied by unusual circumstances of hardship, personal affronts, both to the claimant and to his wife and employees, and every manner of personal indignity seems to have been inflicted upon the claimant. The rule of international law is clear that a government is liable to respond in damages either for an arrest without cause, or an unlawful detention even if the arrest was with probable cause, and for harsh and arbitrary treatment in any case. (See the decided cases collated by Mr. Moore in the fourth volume of his work on International Arbitrations, p. 3235 et seq.)

III.

The Government of Venezuela is equally responsible in this case for the wrongful acts done by the revolutionary soldiers.

It appears from the facts in this case that the wrongs perpetrated by the revolutionary soldiers were under circumstances where the injury could easily have been prevented by the Government forces who were present in the city of Yrapa in greater numbers than the insurgents, and who took either no action, or at least no such efficient action as they might have taken to prevent these occasional raids of the insurgent forces and the consequent injuries to the claimant.

The rule of international law whereby a government is liable for failing to protect foreigners within its limits from such injuries where it is clearly shown to lie within its power to do so, or that the authorities took no proper action for that purpose, is fundamental.

IV.

An award should be made for the full amount of the claim.

So far as the claim is made up of money taken on forced loans and property either taken or destroyed, the evidence, as we have already stated, clearly establishes the loss of the \$30,000 claimed. The claim of \$50,000 for false arrest, illegal detention, and personal indignities suffered is, we think, under the circumstances and the aggravated character of the injuries complained of in this case, a moderate claim.

We submit, therefore, that an award should be made for the entire claim.

Respectfully submitted.

ROBERT C. MORRIS
Agent of the United States.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Emilia Alsous Flutie, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 14.
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BRIEF ON BEHALF OF THE UNITED STATES.

I.

STATEMENT OF FACTS.

The United States presents in this case the claim of Emilia Alsous Flutie for damages in the sum of \$21,500.

The claimant is the wife of Elias Assad Flutie, and he is a naturalized citizen of the United States, having been naturalized on the 2d of July, 1900, in the eastern district of New York. The claimant's husband had for some time prior to the matters complained of been operating a general store in the city of Yrapa, in the Republic of Venezuela, and claimant herself carried on a separate business in connection therewith, trading in articles suitable for ladies' wearing apparel and personal adornment, and she owned the stock in trade, consisting of laces, silks, perfumery, etc., of the value of \$1,500.

Her claim is for the destruction of this property and for personal ill treatment and indignities received, partially at the hands of the Government troops and partially at the hands of the insurgents, between September, 1900, and March, 1902.

The facts set forth in the memorial show that all of her stock in trade was carried off by Government officials or Government troops, under the direction of their officers, and that the claimant was repeatedly subjected to personal abuse, attempted criminal assaults, abusive language and gross personal indignities by the officers of the Government or its soldiers under the command of their officers, and in like manner on two instances by the revolutionary troops.

The facts in this case are amply supported in every detail by not only the sworn memorial and its accompanying affidavits, but also by the testimony of Mr. Abraham Flutie, Mrs. Emilia A. Flutie the claimant herself, Elias A. Flutie, and Julian A. Flutie. The evidence clearly shows that the acts complained of as acts of the Government officials were acts done by or under direct authorization of the military officials of the Venezuelan Government, of a rank such as to make the Government responsible for their acts. The evidence also clearly shows that the unlawful acts of the revolutionary soldiers complained of were done under circumstances where the property could have been amply protected by the Government forces and authorities, but that they took no action whatsoever to render that protection.

The evidence is also clear that the value of the property taken was at least the sum of \$1,500 demanded in this respect, the remainder of the claim being for personal injuries and indignities suffered by the claimant.

II.

The Government of Venezuela is clearly liable for the wrongs complained of, done by the military and other officials of the Venezuelan Government.

There can be no question, as a matter of international law, that the Government of Venezuela is responsible for the damages to property and for the personal injuries which claimant has suffered in this case. The claim consists, in the first place, of a claim for property taken and destroyed. It is clear on the evidence that this property was taken or destroyed either with the authority or in the presence of commanding officials of the Government, who had the means but did nothing to prevent the outrage. These facts give the claimant a right to compensation. (See the opinion of the Chilean Claims Commission, as set forth in the fourth volume of Moore's International Arbitrations, pages 3711 to 3712.) It is equally clear that the Venezuelan Government is liable to respond in damages for the personal affronts, indignities, and hardships which the claimant was compelled to undergo. These acts seem to have been committed wholly without cause, as acts of wanton and unprovoked injury and insult. The rule of international law holding a government responsible for damages in such a case is clear beyond a question. (See the cases collected by Mr. Moore in the fourth volume of his work on International Arbitrations, page 3235 et seq.)

III.

The Government of Venezuela is equally responsible in this case for the wrongful acts done by the revolutionary soldiers.

It appears from the facts in this case that the wrongs perpetrated by the revolutionary soldiers were under circumstances where the injury could easily have been prevented by the Government forces who were present in the city of Yrapa in greater numbers than the insurgents, and who either took no action, or at least no such efficient action as they might have taken to prevent these occasional raids of the insurgent forces and the consequent injuries to the claimant.

The rule of international law whereby a government is liable for failing to protect foreigners within its limits from such injuries where it is clearly shown to lie within its power to do so, or that the authorities took no proper action for that purpose, is fundamental.

IV.

The claimant is entitled to bring this action as a citizen of the United States.

It appears from the evidence that the claimant's husband was a naturalized citizen of the United States. This fact makes the claimant also a citizen of the United States; certainly, at least, during the lifetime of her husband. There can be, we think, no question that as a rule of international law the nationality of the wife must be that of her husband. (See the decisions collated in the third volume of Moore's work on International Arbitrations, page 2483 et seq.) In

these cases the rule seems to be laid down that during the life of the husband the nationality of the wife is that of the husband; that upon his death she has the right to choose whether she will retain the nationality of her deceased husband or return to that of her birth, which election or choice she may be determined to have made by the facts in the case; but in this case, as it appears the husband is still living, we think there can be no question that the claimant is a citizen of the United States, and as such is entitled to present her claim before this Commission.

V.

An award should be made for the full amount of the claim.

So far as the claim is made up of property either taken or destroyed, the evidence, as we already have stated, clearly establishes the loss of the \$1,500 claimed. The claim for \$20,000 for personal indignities suffered is, we think, under the circumstances and the aggravated character of the injuries complained of in this case, a moderate claim.

We submit therefore that an award should be made for the entire claim.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

Nos. 13 and 14.

ANSWER.

To the honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied the claims presented by Elias Assad Flutie and his wife, Amelia Alsous Flutie, Turks by birth, naturalized citizens of the United States, on account of damages sustained in their property during the last civil wars which have taken place in Venezuela, and, as a result of this study, he respectfully calls to the attention of the Commission the following:

The proof upon which the two claims are supposed to be founded consists in mutual declarations of both husband and wife and their nearest relations of consanguinity and affinity. Julian and Abraham Flutie, who, besides this relationship which they bear to the claimants, probably have an interest in the business which was established, as is evidenced by the circumstances that they all lived in the same city of Yrapa, and that they have all gone to the United States together.

It is a rule of common law, admitted and sanctioned by the legislation of all civilized people, that the testimony of persons closely related by blood to the parties before the court, or who have an interest in the action, is not admissible even as circumstantial evidence. Since the evidence is in such shape, it is clear that the claims lack proof and ought, therefore, to be declared as not having been proved.

Caracas, June 29, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Elias Assad Flutie v. THE REPUBLIC OF VENEZUELA.	}	No. 13.
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THE UNITED STATES OF AMERICA ON BEHALF of Amelia Alsous Flutie v. THE REPUBLIC OF VENEZUELA.	}	No. 14.
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REPLICATION ON BEHALF OF THE UNITED STATES.

The Republic of Venezuela has joined the two claims above in its answer, and the United States therefore joins them in its replication. The United States takes issue on the stand of Venezuela in relation to the sufficiency of the proof adduced:

I.

The contention of Venezuela that the proofs submitted are not admissible, even as circumstantial evidence, can not be sustained. The proofs submitted are in accordance with the protocol as provided in Article II, which states:

The Commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim. * * *

The evidence produced in support of these claims is in the form of depositions taken before competent officers and clearly proves the claims as made. Even if nothing more than unsworn papers, it would deserve the scrupulous attention of this court for, as above quoted, "the Commissioners * * * shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments." Furthermore they are bound to "receive and consider all written documents or statements which may be" similarly presented to them. To accept the interpretation suggested by the answer would require the Commission, in the face of the protocol, to reject the depositions submitted, and this it is without power to do.

The fact that the claimant and his witnesses are nearly related is something which goes to the weight of the evidence and not to its admissibility, as is well understood under the laws of England and the United States as well as many other countries. Even when in England and the United States the testimony of parties interested was not received, this exclusion only extended to the plaintiff or defendant and did not affect the other members of his family except in certain cases the wife. It would therefore follow that under the ancient rule now rejected in England and America, because of its unreasonable and inequitable character, even though the depositions of the claimants in

this case were to be rejected, the testimony of the brothers is ample in itself, sustains the memorial and must be received.

But, even under the old law of England and the United States, in cases such as the present, the testimony of the parties was receivable for, as appears by section 1288 of Sedgwick on Damages, even when evidence of parties was rejected, the rule was not enforced when direct injury was inflicted by the defendant upon the plaintiff. Thus—

To prove the truth of entries in his (plaintiff's) books of account, delivered in small amounts, or of daily labor performed when the party from his situation has no evidence but the accounts kept by himself and where, as a general thing from the nature of the traffic or services, he could not have. So, too, where robberies or larcenies have been committed and no evidence existed but that of the party robbed or plundered, he has been admitted as a witness to prove his loss; for it was said that, in these cases, the party injured, should have an extraordinary remedy in odium spoliatoris. * * * So also in equity, where a man ran away with a casket of jewels, the party injured was admitted as a witness. So too, when the defendant, a shipmaster, broke open and plundered the plaintiff's trunk, the latter was allowed to testify to the contents of the trunk.

In the present instance, the only witnesses having full and definite knowledge of the facts who might be assumed favorable to the plaintiff and whose evidence was in any degree available were examined.

It is to be noted as a pregnant fact that Venezuela makes no denial whatsoever of the facts stated by and on behalf of the claimants, although exact knowledge of these facts was easily obtainable by her or rested entirely in her possession. The testimony, therefore, of the claimant and his witnesses remains unimpeached and unchallenged and in the absence of countervailing proof must be treated as absolute verity.

II.

Referring again to the contention of Venezuela as to the inadmissibility of the evidence, it is stated on her behalf that "the testimony of persons closely related by blood to the parties before the court or who have an interest in the action is not admissible even as circumstantial evidence." This may be the law of Venezuela, but we are not bound by it under the protocol.

Even the law of Spain (Escriche, Volume IV, p. 1109, title, Testigo) only provided that a brother could not testify for another while they lived together under the paternal authority; but in the present case, as appears from the consideration of the evidence, the family does not live together, the claimant subscribing to the memorial in the State of Massachusetts, Abraham Flutie giving his testimony in Wilkesbarre, Pa.; Mrs. Amelia Flutie in Wilkesbarre, and Julian Flutie in Washington, D. C. Abraham Flutie afterwards changed his residence to Baltimore. The several towns are many hundred miles apart, except Baltimore and Washington, 40 miles from each other. And it nowhere appears in the testimony that they are still under the paternal authority.

III.

In considering the testimony produced in these cases, it is necessary to bear in mind the amount of testimony that the claimants have been able to secure. The only other witness whose testimony could bear materially on the case is another employee of the claimants by the

name of Victor Ferralle. Frequent attempts have been made by the claimants to locate Mr. Ferralle, with a view to adding his testimony to that already produced, but so far such attempts have met with no success.

IV.

The suggestion that the parties have a mutual interest in the business is not borne out by the testimony or by any of the circumstances of the case, and therefore calls for no special reply, contradicted as it is by the express testimony of the several witnesses.

V.

Further as to the admissibility of the evidence submitted we respectfully refer to our previous discussion of this subject in the claim of Ford Dix (No. 1), where we have quoted authorities which show that any evidence which tends to produce a moral conviction in the minds of the Commission is sufficient. We refer to the findings of the Halifax Commission; to the opinion of Mr. Robert Bunch, in the case of the *Montijo*; and to the holding of Judge Davis in the Caldera cases (15 C. Cls. R., 546).

Furthermore, as to the technical rules of evidence which would appear to be invoked by the answer of Venezuela, we respectfully call the attention of the Commission to the third paragraph of Article I of the protocol, where it is provided that:

The Commissioners, or in case of their disagreement the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation.

In this connection we desire to call the attention of the Commission to Meade's case (2 C. Cls. R., p. 271), which states:

Most of the difficulties that have attended this case originated in what we deem a mistake of the Commissioners under this treaty. They applied the strict, rigid, technical rules of evidence that belong to the administration of municipal or criminal justice in the adjustment of these international affairs to which they were *inappropriate*.

The engagement of nations, the adjustment of their claims upon each other, or those of their respective citizens and subjects, should not, and for obvious reasons can not, be subjected to the *narrow, technical rules of ordinary tribunals*.

We submit that the evidence in these cases is the best which could be possibly obtained; that it is full and sufficient, and that an award should be made for the full amount claimed.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Elias Assad Flutie, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 13.
and		

THE UNITED STATES OF AMERICA ON BEHALF of Emilia Alsous Flutie, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 14.
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DECISION.

Opinion by Bainbridge, Commissioner.

The Commission dismisses the above-entitled claims, without prejudice, for want of jurisdiction.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Elias Assad Flutie, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 13.
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BAINBRIDGE, Commissioner.

For reasons hereinafter made apparent it is deemed advisable to consider these two claims together.

The memorial of Elias Assad Flutie, subscribed and sworn to on March 7, 1903, before William J. Marshall, a notary public in and for the county of Middlesex, State of Massachusetts, states:

1. That the said Elias A. Flutie is a native of Syria, 27 years of age; that he came to the United States in the year 1892, and was naturalized a citizen of the United States on the 2d day of July in the year 1900, in the district court of the United States of America for the eastern district of New York, sitting in the city of Brooklyn, in proof whereof said claimant produces with his memorial a certified copy of said certificate of naturalization, marked "Exhibit A," and that claimant is now a citizen of the United States, and a resident of the city of Wilkes-barre, State of Pennsylvania.

2. That about the year 1899 claimant went temporarily to the city of Yrapa, in the Republic of Venezuela, to establish a business as a

general merchant, returning shortly afterwards to the United States, leaving said business in charge of his brothers; that said business was conducted for the period of one year without interruption, resulting in a large profit to the claimant; that claimant returned to Venezuela from time to time to supervise the conduct of said business; that he was at all times the sole person interested in said business; that his stock in trade was worth about \$30,000; that all of claimant's books of account and records of what stock he had were destroyed, but that he is able to state from memory what amount of stock there was on hand, and he attaches an inventory thereof marked "Exhibit B;" that he employed as clerks to assist him in said business his two brothers, Julian and Abraham Flutie, and also two other persons named Victor Ferralle and José R. Romero.

3. That the claimant returned from the United States in August, 1900, and from that time claimed citizenship in the United States and the protection of the United States Government; that prior to his return to Venezuela a revolution broke out in that Republic; that at various times after his return, between September, 1900, and March, 1902, he was the victim of forced loans, destruction of property, false arrests and illtreatment in connection therewith, received partially at the hands of the Government officials and troops and partially at the hands of the insurgents; that his store was raided on repeated occasions; he himself was repeatedly arrested and lodged in jail and kept for indefinite periods, and released only upon his consenting to make the demanded forced loans, or when the officers of the Government had in the meantime obtained from his store such goods and money as they demanded. The memorial states 17 specific instances of such alleged illegal acts on the part of the officers of the Government and 7 similar unlawful acts on the part of the revolutionists; that because of said acts of violence all of claimant's property, to the value of \$30,000 in United States gold, was confiscated, lost, or destroyed, and that on June 7, 1901, the claimant, together with his wife and children, was forced to leave the country.

4. Claimant demands from the Government of Venezuela as a just recompense for the injuries he has suffered, for loss of property the sum of \$30,000 and for illtreatment the sum of \$50,000, in all, the sum of \$80,000 in United States gold coin.

The memorial of Emilia Alsous Flutie, subscribed and sworn to on March 31, 1903, before Arthur L. Turner, a notary public in and for Luzerne County, State of Pennsylvania, states:

1. That the said Emilia Alsous Flutie is a native of Syria, 25 years of age; that in the city of Carupano in the Republic of Venezuela on the 22d day of July, 1897, she was married to Elias Assad Flutie according to the rites of the Roman Catholic Church, having previously, to wit, on the 25th of April, 1896, been married by the civil authorities of said Republic to said Elias A. Flutie; that her husband was naturalized a citizen of the United States of America on the 2d day of July, 1900, in the district court of the United States for the eastern district of New York, sitting in the city of Brooklyn; that a duplicate of his certificate of naturalization is attached to her memorial, marked "Exhibit A;" that by virtue of the naturalization of Elias Assad Flutie as a citizen of the United States claimant is a citizen thereof; and that she is now a resident of the city of Wilkesbarre, State of Pennsylvania.

2. That from the month of September, 1900, to the month of June, 1901, claimant was with her husband in the city of Yrapa, Venezuela; that apart from her husband's business, and in her own name, for her own separate benefit, claimant used to carry on a small trade in toilet articles, etc.; that her stock in trade was worth \$1,500; that claimant was unable to preserve any documents showing her actual stock, but is able to state from memory what amount of stock she had on hand and attaches to her memorial an inventory thereof, marked "Exhibit B," which sets forth the amount and cost value of the articles; and that she was the sole person interested in said business.

3. That during the year 1900 and 1901 there was a revolution in progress in Venezuela, in the course of which she was subjected at various times to such illtreatment, at the hands of both the Government officials and the insurgents, that she became ill; that as a result of such illtreatment her health has been permanently impaired; that toward the close of December, 1900, certain Government officials arrested and imprisoned claimant's husband, and in his enforced absence, said officials tried to criminally assault claimant and were driven off by the claimant at the point of a pistol; that they took possession of all the goods which belonged to claimant, and after having destroyed some took the remainder away with them, said property being of the value of \$1,500 gold, and that on June 7, the claimant, together with her husband and children, was forced to leave the country, sailing from Yrapa at night during a heavy tropical tempest in a small sailboat of about 5 tons burden, which afforded absolutely no shelter, and that after four days of such exposure they at length reached the island of Trinidad.

4. Claimant demands as a just recompense for her loss of property the sum of \$1,500, and for the illtreatment she has suffered the sum of \$20,000; in all, the sum of \$21,500 in United States gold coin.

The two claims aggregate the sum of \$101,500 gold.

The only testimony introduced is that of the claimants themselves and of Abraham and Julian Flutie, brothers of Elias A. Flutie.

It appears from the evidence that the claimants were suspected by the Venezuelian authorities of unlawful traffic in fraud of the revenue, but the charges of smuggling are denied by the claimants, and the arrests are alleged to have been without just foundation. It is a fact not without significance, however, that although the alleged outrages extended over a period of nearly a year, the evidence does not show that during that time any notice of them was brought to the attention of the consular officers or diplomatic representative of the United States in Venezuela.

But in view of the position taken by the Commission relative to these claims, a further discussion of their merits is unnecessary.

Article 1 of the protocol constituting this Commission confers jurisdiction over "all claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments."

This Commission has no jurisdiction over any claims other than those owned by citizens of the United States of America. The American citizenship of a claimant must be satisfactorily established as a primary requisite to the examination and decision of his claim. Hence the Commission, as the sole judge of its jurisdiction, must in each case

determine for itself the question of such citizenship upon the evidence submitted in that behalf.

The citizenship of claimants is as fully a question of judicial determination for the Commission in respect to the relevancy and weight of the evidence and the rules of jurisprudence by which it is to be determined as any other question presented to this tribunal, subject only to the provisions of Article II of the protocol that the Commissioners or umpire, as the case may be, shall investigate and decide claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments.

The jurisdiction of the Commission over both of these claims depends upon the American citizenship of Elias A. Flutie. The evidence of Flutie's citizenship in each case is a copy of the record of his naturalization on July 2, 1900, in the district court of the United States for the eastern district of New York. The record recites that Flutie had produced to the court such evidence and made such declaration and renunciation as are required by the naturalization laws of the United States, and that he was accordingly admitted to be a citizen thereof.

This certificate of naturalization as the record of a judgment of a high court is *prima facie* evidence that Elias A. Flutie is a citizen of the United States. It is not, however, conclusive upon the United States or upon this tribunal.

In the case of Moses Stern (13 Op. Atty. Gen., 376) the Attorney-General of the United States, Mr. Akerman, said:

Recitations in the record (i. e., of naturalization) of matters of fact are binding only upon parties to the proceedings and their privies. The Government of the United States was no party and stands in privity with no party to these proceedings. And it is not in the power of Mr. Stern, by erroneous recitations in *ex parte* proceedings, to conclude the Government as to matters of fact.

In the circular of Mr. Fish, Secretary of State, dated May 2, 1871, he says:

It is material to observe that according to the opinion of the Attorney-General in the case above mentioned, the recitations contained in the record of naturalization, as to residence, etc., are not conclusive upon either this or a foreign government, but that when such recitals are shown by clear evidence to be erroneous, they are to be disregarded. (Foreign Relations 1871, p. 25.)

Such is still the position taken by the Department of State.

As for the naturalization laws to which you allude, they are of direct concern to this Department only so far as they affect the *international status* of those who become naturalized. As you are aware, the Department's regulations require every naturalized citizen when he applies for a passport to make a sworn statement concerning his own or his parents' emigration, residence, and naturalization; and whenever the naturalization appears to have been improperly or improvidently granted, it is not recognized under the Department's rules. (Mr. Hay, Secretary of State, to Mr. Sampson, June 21, 1902; Foreign Relations 1902, p. 389.)

The record of a judgment rendered in another State may be contradicted as to the facts necessary to give the court jurisdiction; and if it be shown that such facts did not exist the record will be a nullity, notwithstanding that it may recite that they did exist. (Thompson v. Whitman, 18 Wall., U. S., 457.)

In *Pennywhit v. Foot*, 27 Ohio St., 98, the court said that a judgment offered in evidence—

may be contradicted as to the facts necessary to give the court jurisdiction; and if it be shown that such facts did not exist, the record will be a nullity, notwithstanding it may recite that they did exist, and this is true either as to the subject-matter or the person, or in proceedings in rem. as to the thing.

The functions and authority of an international court of arbitration are clearly expressed by Mr. Evarts, Secretary of State, in a communication relative to the United States and Spanish commission of 1871, which Mr. Evarts declared to be "an independent judicial tribunal possessed of all the powers and endowed with all the properties which should distinguish a court of high international jurisdiction, alike competent, in the jurisdiction conferred upon it, to bring under judgment the decisions of the local courts of both nations, and beyond the competence of either Government to interfere with, direct, or obstruct its deliberation." He says furthermore that the tribunal had authority "to fix, not only the general scope of evidence and argument it will entertain in the discussion both of the merits of each claim and of the claimant's American citizenship, but to pass upon every offer of evidence bearing upon either issue that may be made before it."

In Medina's case, decided by the United States and Costa Rican commission of 1860, Bertinatti, umpire, says:

An act of naturalization, be it made by a judge *ex parte* in the exercise of his voluntary jurisdiction, or be it the result of a decree of a king bearing an administrative character, in either case its value, on the point of evidence before an international commission, can only be that of an element of proof, subject to be examined according to the principle *locus regit actum*, both intrinsically and extrinsically, in order to be admitted or rejected according to the general principles in such a matter.

* * * * *

The certificates exhibited by them (the claimants), being made in due form, have for themselves the presumption of truth; but when it becomes evident that the statements therein contained are incorrect the presumption of truth must yield to truth itself. (3 Moore's Int. Arb., 2587.)

Whatever may be the conclusive force of judgments of naturalization under the municipal laws of the country in which they are granted, international tribunals, such as this Commission, have claimed and exercised the right to determine for themselves the citizenship of claimants from all the facts presented. (Medina's case, *supra*; Laurent's case, 3 Moore's Int. Arb., 2671; Lizardi's case, 3 Moore's Int. Arb., 2589; Kuhnagel's case, 3 Moore's Int. Arb., 2647; Angarica's case, 3 Moore's Int. Arb., 2621; Criado's case, 3 Moore's Int. Arb., 2624.)

The present Commission is charged with the duty of examining and deciding all claims owned by *citizens of the United States* against the Republic of Venezuela. It is absolutely essential to its jurisdiction over any claim presented to it to determine at the outset the American citizenship of the claimant, and the fact of such citizenship, like any other fact, must be proved to the satisfaction of the Commission or jurisdiction must be held wanting.

Notwithstanding the certificates of naturalization introduced in evidence here, the Commission is not satisfied that Elias Assad Flutie is a citizen of the United States, or that it has under the protocol any jurisdiction over these two claims.

Section 2170 of the Revised Statutes of the United States provides that:

No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

This law is not construed to require the uninterrupted presence within the United States of the candidate for citizenship during the entire probationary period. Transient absence for pleasure or business with the intention of returning does not interrupt the statutory period or preclude a lawful naturalization at the expiration thereof.

But the law does require the candidate to "reside" within the United States for the continued term of five years next preceding his admission.

No alien who is domiciled in a foreign country immediately prior to and at the time he applies to be admitted to citizenship can be lawfully naturalized a citizen of the United States.

Domicile is residence at a particular place accompanied with an intention to remain there; it is a residence accepted as a final abode. (Webster.) Domicile in Venezuela during a certain period precludes for the same period residence in the United States within the meaning and intent of the statutes of naturalization.

A man's domicile, as involving intent, is often difficult of ascertainment. But publicists and courts regard certain criteria as establishing the fact.

If a person goes to a country with the intention of setting up in business, he acquires a domicile as soon as he establishes himself, because the conduct of a fixed business necessarily implies an intention to stay permanently. (Hall, Int. Law, 517.)

If a person places his wife and family and "household goods" in a particular place, the presumption of the abandonment of a former domicile and of the acquisition of a new one is very strong. (4 Phillimore's Int. Law, 173.)

If a married man has his family fixed in one place and he does business in another, the former is considered the place of his domicile. (Story, Conflict of Laws, Ch. III, sec. 46.)

The residence of a man [says Judge Daly] is the place where he abides with his family, or abides himself, making it the chief seat of his affairs and interests. (Quoted in Medina's case, supra.)

The apparent or avowed intention of constant residence, not the manner of it, constitutes the domicile. (Guier v. O'Daniel, 1 Binney, 349.)

Intention may be shown more satisfactorily by acts than declarations. (Shelton v. Tiffin, 6 How., U. S., 163.)

These are the criteria of domicile, recognized by both international and municipal law. Concurrently existing in this case, they fix the domicile of Elias A. Flutie prior to and on July 2, 1900, in the Republic of Venezuela.

The evidence bearing upon the residence of Elias A. Flutie is the following:

Elias A. Flutie states that he is a native of Syria, 27 years of age (in 1903); that he came to the United States in 1892; that during the years 1899, 1900, and 1901, his occupation was that of a merchant, and his residence was in the city of Brooklyn in the State of New York, where he had resided for several years past; that about the year 1899 he went temporarily to the city of Yrapa in Venezuela to establish a business as a general merchant, returning shortly afterwards to the United States, leaving said business in charge of his brothers; that he had temporarily left his family in Yrapa in charge of his brothers, and visited them from time to time for a greater or less period; that he made frequent trips to Yrapa to supervise the management of his business, returning each time to his home in Brooklyn; that he was naturalized a citizen of the United States on July 2, 1900; that in August, 1900, he returned to Venezuela, where he remained until compelled to flee from the country in June, 1901.

In Flutie's testimony there is no intimation that he was ever in Venezuela prior to "about 1899," when he went there "temporarily" to establish the business at Yrapa, where he "temporarily" left his family whom he visited from time to time "for a greater or less period." Indefiniteness, evasion, a manifest shaping of his statements to accord with the supposed necessities of his case and a suppression

of material facts characterize all his testimony on the subject of his residence and discredit it.

Emilia Alsous Flutie testifies (on March 25, 1903) that she had known Elias A. Flutie for seven and one-half years. Her acquaintance with him must have begun, therefore, about September, 1895. She swears that she was married to him by the civil authorities of Venezuela on the 25th day of April, 1896, and that she was married to him again according to the rites of the Roman Catholic Church on July 22, 1897, at Carupano, Venezuela; that during part of the year 1899 she resided at Carupano, Venezuela, going from Carupano to Yrapa, Venezuela, in the latter part of that year, where she resided until June, 1901; that in both Carupano and Yrapa she was engaged in the sale of laces, fancy needlework, and fancy goods.

Abraham A. Flutie testifies that he has known Mrs. Emilia Flutie since July, 1897, when she was married to his brother by Father Pedro Ramos, and that the business at Yrapa was established in July or August, 1899.

Julian A. Flutie testifies that the business at Yrapa was conducted under the name of Flutie Hermanos, although it belonged entirely to Elias A. Flutie; that he first met Mrs. Emilia Flutie on the 8th of July, 1897, when he was introduced to her by his brother Elias, who told him that he had been civilly married to her on April 25, 1896; that on July 22, 1897, his brother was married to her according to the rites of the Roman Catholic Church at Carupano, Venezuela; that he was best man at the wedding, and the ceremony was performed by Rev. Antonio Ramos. He says that in June, 1901, Mrs. Flutie became so frightened, both for her own safety and that of her children, that she was forced to leave the country.

As it does not appear in evidence that Mrs. Flutie was ever in the United States until she went there with her husband in 1901, it is apparent that Elias A. Flutie must have left the United States as early as September, 1895. It is proven that he was married in Venezuela in April, 1896, and remarried there in July, 1897; and by his own statement he was established in business there in 1899.

Flutie claims that for several years prior to July 2, 1900, he resided in the United States, and that subsequent to about 1899 he made frequent trips to Venezuela to visit his family for greater or less periods and to supervise the management of his business, returning each time to his home in Brooklyn.

The Commission is satisfied from all the evidence before it in these cases that the reverse is true; that Flutie resided in Venezuela from at least the fall of 1895 up to July or August, 1899, at or near Carupano, and after that time at Yrapa; that he may have made trips to the United States and undoubtedly did make one there shortly before July 2, 1900, returning to his home and family and business in Venezuela shortly afterwards—that is to say, in August, 1900—from which time there is neither allegation nor proof in the record, nor any fair implication therefrom, that he ever intended voluntarily to return to the United States.

Naturalization in the United States, without any intent to reside permanently therein, but with a view of residing in another country, and using such naturalization to evade duties and responsibilities to which without it he would be subject, ought to be treated by this Government as fraudulent. (14 Op. Atty. Gen., 295; Wharton Int. Law, Dig., sec. 175.)

The evidence presented in these cases convinces the Commission

that Elias A. Flutie did not "reside" in the United States for the continued term of five years or any considerable portion thereof prior to the 2d day of July, 1900; that the facts necessary to give the court jurisdiction did not exist, and therefore that the certificate of naturalization was improperly granted.

It follows that these claimants have no standing before the Commission as citizens of the United States, and their claims are therefore dismissed for want of jurisdiction, without prejudice, however, to their presentation in a proper form.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Elias Assed Flutie, claimant, v. THE REPUBLIC OF VENEZUELA. and	}	No. 13.
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THE UNITED STATES OF AMERICA ON BEHALF of Emilia Alsous Flutie, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 14.
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DECISION.

The above-entitled claims are hereby dismissed, without prejudice, for want of jurisdiction.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.
J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

RUDOLPH DOLGE,
Secretary on the part of the United States of America.
J. PADRON UZTÁRIZ,
Secretary on the part of Venezuela.

Delivered August 1, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George Freeman Underhill and Jennie Laura Underhill, his wife, claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 15.
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BRIEF ON BEHALF OF THE UNITED STATES.

I.

STATEMENT OF FACT.

The United States presents in this case two claims for damages—one in favor of George Freeman Underhill, in the amount of \$232,316.28;

the other in favor of Jennie Laura Underhill, his wife, in the sum of \$100,000.

The claimants are both native-born citizens of the United States.

The claims of both claimants are made for damages for personal injuries, insults, abuse, and false imprisonment. The claim of George Freeman Underhill also includes a claim for property destroyed or which he was compelled to sacrifice or abandon by reason of his being compelled to flee the country.

The facts out of which both claims arise are the same, and are briefly as follows:

George Freeman Underhill was a mechanical engineer, residing at the time of the occurrences here complained of in 1891 and thereafter, with his wife, the other claimant, in the city of Bolivar, where he was operating a waterworks under a concession from the Government, and also had a residence and machine shop, tools, and appliances. The residence, machine shop, etc., were his absolute property. The waterworks was a leased concession from the Venezuelan Government.

On August 11, 1892, a day or two after the defeat of Carrera's troops by the revolutionists under the command of General Hernandez, a large number of officials of the former government were preparing to flee from the city of Bolivar, and Mr. Underhill made arrangements to have his wife leave the city on the same steamship. While proceeding to the steamship they were attacked by a mob who prevented their leaving. They were thereupon arrested by soldiers of the army of Hernandez, brought back to the city, confined in jail, and subsequently confined under military guard in their own residence and subjected to great privations and hardships for an unusually long space of time. Mrs. Underhill was finally given a passport and allowed to leave Bolivar, but Underhill himself was kept under surveillance and practical arrest until the middle of October, 1902. Meanwhile both claimants had been not only arrested and confined, but subjected to personal indignities and hardships which are set out at length in their memorial. The apparent object of retaining them in confinement was to compel the release on the part of Mr. Underhill of his rights in his waterworks concession and a sale of the same at a purely nominal figure. This result having been accomplished, he was allowed to go. His treatment and that of his wife, and threats which had been made, were such as necessarily to compel him to flee the country, abandoning to destruction his residence and other personal property in Bolivar.

II.

The evidence clearly supports the claims set forth in the memorials.

There are annexed to the memorials a large number of matters of documentary evidence, as well as evidence and depositions of various witnesses to the transactions complained of, or some of them, all sustaining the complaint.

Nor are the substantial facts in any way denied by the Venezuelan Government. There is an attempt to palliate them and charge that the facts are overstated, and that the action taken was not so harsh or arbitrary as represented. This goes to the degree merely and not to the fact of the wrongs complained of. The fact that these claimants were arrested without warrant and detained under circumstances of

abuse, hardship, and most arbitrary treatment for an unusual and illegal period of detention, without any charge being made against them, are clearly sustained by the evidence and would seem to be conceded.

IV.

Mr. Underhill had not been guilty of any breach of neutrality.

The perhaps incipient cause of the trouble, so far at least as action of the mob of citizens of Bolivar was concerned, was the belief that Mr. Underhill had been taking an active part in the support of the former government of Venezuela. This charge related solely to his having repaired certain vessels which were damaged and which were afterwards made use of by the troops of the former government. The evidence, both in the statements of Mr. Underhill and his wife, and in the documents accompanying them, is, however, clear that whatever Mr. Underhill did in this way was done under compulsion, duress, and threats of arrest on the part of the then government of the country, and not voluntarily done, or in a way to in any wise authorize the conclusion that he was siding with or aiding their side in the pending revolution. Moreover, it can hardly be said that a mechanic who, at the instance of a regularly constituted government then in power, should for pay perform work toward repairing the machinery of a steamboat owned by the Government, could be regarded as guilty of a violation of his neutrality.

V.

The acts complained of were done either under the direct authority of the government which was then being established and thereafter became established as the Government of Venezuela, or were ratified and adopted by the officials of that Government.

It might perhaps be contended that the Government of Venezuela was not responsible for the acts of the mob of citizens who followed the claimants and prevented their leaving the city of Bolivar, if that Government had promptly released them and protected them from the mob, but instead of doing so, General Hernandez took possession of them from the mob as prisoners, not for the purpose of releasing them, but for the purpose of retaining them in custody, thereby ratifying instead of disaffirming the actions of the mob, or in any way protecting them against it. The acts of that mob must therefore be regarded as the acts of the Government, either directly authorized or subsequently assumed, and for which, in either case, they are equally responsible. The subsequent acts complained of were done either directly by or under the direct orders and supervision of General Hernandez himself.

For all such illegal acts the Government of Venezuela is therefore directly responsible.

VI.

An award should be made in favor of each claimant for the damages arising from the false arrest, imprisonment, and unlawful detention, and for the personal injuries, insults, and abuse to which they were subjected.

So far as concerns this part of the claim of Mr. Underhill and the corresponding claim of his wife, which is all the claim in the latter

case, there can be no question that the Venezuelan Government is responsible for the damages resulting from the cause complained of.

The proposition of international law as to the liability of a government in such a case is clearly established—that a government is liable to foreign citizens for damages arising from the arrest without cause, for an undue and unlawful detention, even where the arrest was with probable cause, and for abusive, harsh, and arbitrary treatment to which the prisoners were subjected, whether the arrest was with cause or not. (See the decided cases upon this subject collected in the fourth volume of Moore's Work on International Law, p. 3235 et seq.)

VII.

An award should also be made in favor of George Freeman Underhill for the value of all his property and property rights at Bolivar.

The case is, on the evidence, clearly one in which the claimant was compelled to flee the country in order to save himself from further personal injuries and probable loss of life.

The rule of international law is clear that in such a case, which is in substance and effect equivalent to an expulsion from the country, the expelling government is liable for damages to the full value of the property so necessarily abandoned. (See 4th Moore's International Arbitration, p. 3333 et seq.)

The circumstances of this case show a clear intention on the part of the Venezuelan authorities to obtain the possession of claimant's property. The attempt was made to obtain this by his consent, and the obtaining of a documentary transfer as to his waterworks concession thus taken was successful, but it appears that his illegal and unlawful detention for so long a period of time in practical imprisonment was clearly for the purpose of bringing about a relinquishment of his property rights. That Mr. Underhill left voluntarily—was, in fact, urged to go—makes no difference in the case. The expulsion arose on the acts of the Venezuelan authorities in subjecting him to such treatment and creating a condition of such danger and imminent loss of life as to amount to a practical expulsion from the country.

Nor does the fact that under such duress the claimant signed papers relinquishing his waterworks concession alter his right to relief. It clearly appears that this was obtained under circumstances amounting to the greatest conceivable duress, nor can the recital of apparent consideration and voluntary action in the document itself have any weight as against the clear facts showing the duress. These statements were necessarily extorted under the same duress.

VIII.

An award should be made in favor of the claimant for the full amount claimed.

The case presents unusual circumstances of a harsh and arbitrary action on the part of the authorities of the Venezuelan Government, both in the making of a false arrest and an unusual and unlawful detention and imprisonment, in the indignities to which the claimants were subjected, and in the manner in which their property was taken from

them and they were compelled, in order to avoid absolute danger to life, to flee the country, abandoning their property. The claimants are each clearly entitled to damages for these unlawful acts, and an award should be made for the full amount claimed.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

Claim No. 15. George F. Underhill and Jennie Laura Underhill.

ANSWER.

Honorable Members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied the double claim presented by the American citizens, George F. Underhill and his wife Laura Underhill, arising out of the transactions which are set forth in the brief of the honorable agent of the United States on both cases.

The undersigned considers that such claims are, from every point of view unfounded, unjust, and inconsiderate, and that the best argument that can be made in favor of this assertion is set out in the report that the captain of the war vessel of the United States, the *Kearsarge* made to the Rear-Admiral Walker, chief of the North Atlantic Naval Station, as a result of the mission with which he was charged of investigating the occurrences in the Ciudad Bolivar which happened to the claimants during the year 1892.

It appears from this report, which undoubtedly represents an impartial and honorable judgment that Mr. Underhill at the date of the occurrences had participated directly and with great interest in the acts of the Government of the State of Bolivar against the revolution called "Legalista," which afterwards became the Government; that as a consequence of this participation, contrary to the duty of neutrality which foreigners ought to respect in civil strifes, deliberately entered into by him and confirmed by the communications of his excellency William L. Scruggs, minister resident of the United States at Caracas to his Government; that he had brought upon himself the odium of the citizenship of Bolivar; that it was charged among other things that he had equipped General Carrera to resist the progress of the revolution, thereby giving rise to more cruel and bloody ravages; that after the victory of the Legalista forces over Carrera, Mr. Underhill and his wife, with manifest imprudence, attempted to abandon the city and were assaulted by a mob which prevented them from accomplishing their journey, and lastly Underhill forced by the circumstances in which he had placed himself, resolved to sell his properties and return to the United States, as he in effect did.

After a careful examination of all the transactions, it is impossible to conceive upon what grounds the claimants demand from Venezuela the payment of such exaggerated sums of money as they claim.

It is a principle of international law of which the most noted publicists have treated that a government can not be responsible for the acts of an infuriated mob, populace, or crowd, when it has not been the efficient cause of them nor capable of suppressing them. The

insults, threats, and other outrages of which the claimants complain, although they were proven could not affect the responsibility of Venezuela, whose authorities could not have prevented them under the extraordinary circumstances in which they were enacted.

The second ground taken has no greater juridical foundation than the first: The sale of his properties which Mr. Underhill made was a voluntary act on his part, and in no way the result of intimidation or violence, circumstances which it is indispensable to prove in order to support the claim in that respect; on the contrary from the report to which the undersigned has been referring it appears that said sale was accepted by Mr. Underhill almost with joy.

The tribunal ought to bear in mind that Underhill was not and had never been the owner of the waterworks of Ciudad Bolivar, which had been constructed at the cost of the National Government, that of the State and the municipality, the cost to the latter being about 248,000 bolivars; he was nothing but a simple lessee of the water supply, and the transfer of the rights which as such he had for the sum of \$6,000, which he received in cash from the firm of Tomasi & Co., was a transaction more than advantageous at that time.

The undersigned has taken the liberty of making the foregoing explanation, because in the report of Commander Crowninshield he appears to attribute to Underhill the ownership of said waterworks.

It should be noted that said commander, after the termination of his mission, was so pleased with the conduct observed by Gen. José Manuel Hernandez, who is accused of having committed the acts out of which the claim arises, that he complimented with satisfaction and offered him the boat which was under his orders to conduct him to the port of La Guaira. Besides the United States Government, which at that time refused the intervention which Underhill asked, has never presented this claim to the Venezuelan foreign office. This is the best proof of its injustice, no doubt.

As a means of illustration and also that it may have its legal effect the undersigned produces the original of a document properly authenticated and legalized, a succinct relation by the same General Hernandez, in which will be found set out with admirable fidelity, the history of the affair. The declaration of a witness, holding a position such as his, has a moral effect which can not be disputed.

Both claims should be declared inadmissible.

Caracas, July 9, 1903.

(Signed) F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George Freeman Underhill and Jennie Laura Underhill, claimants, ".	} No. 15.
THE REPUBLIC OF VENEZUELA.	

REPLICATION ON BEHALF OF THE UNITED STATES.

In replication to the answer of the Venezuelan Government in the above-entitled case the United States submits herewith a brief pre-

pared by the attorneys for the claimants which covers the case in detail. The brief is in printed form and is accompanied with copies of the exhibits referred to therein, except eight photographs marked, respectively, Exhibits 1 to 8, inclusive, copies of which are also placed in evidence before this Commission.

The honorable agent of Venezuela, with his answer, has submitted a deposition of Gen. José Manuel Hernandez, taken in this city on the 10th instant, and lays great stress on the statement of facts therein contained.

We respectfully submit that General Hernandez, notwithstanding his honor, integrity, and high position, has been so intimately connected with the acts out of which this claim arises that he can scarcely be expected to be able to make an unbiased statement in regard to it.

The facts in this case are amply supported by evidence procured at the time of or immediately after their occurrence, and an award should be made in favor of the claimants as prayed in the memorials.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George Freeman Underhill and Jennie Laura Underhill, claimants,	} No. 15.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

BAINBRIDGE, *Commissioner*:

I am unable to agree with my honorable colleague in regard to this claim.

At the time of the alleged transfer of the waterworks Underhill was not, in my judgment, enjoying that freedom from restraint and equality of position as a contracting party which are necessary to give validity to every contract. Furthermore, it appears to me that Mrs. Underhill is entitled in propria persona to an award for her unlawful detention.

As this claim must go to the umpire, however, it is unnecessary to discuss in detail the evidence upon which the foregoing opinion is based.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Jenny Laura Underhill, per se, and as ad- ministratrix of the estate of George Freeman Underhill, deceased, claimant,	} No. 15.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

Doctor PAÚL, *Commissioner*:

Both of these cases represent a claim for an indemnity amounting to \$232,316.28 for personal injuries, insults, abuses, and unjust imprisonment. The claim of George Freeman Underhill includes an indemnity

for having been forced to sacrifice, or abandon, a property, having been obliged to leave the place of his residence.

George Freeman Underhill died in the city of Habana, Cuba, on the 26th of October, 1901, and his widow, Jenny Laura Underhill, presented, on the 17th of June of this year, to the Department of State in Washington, a supplementary memorial as administratrix of the estate of her deceased husband, although it is not proven that she had obtained from the surrogate court for the county of New York, State of New York, the appointment to said charge.

Underhill's death put an end to any claim that could arise from personal injuries, insults, or other offenses, because these facts required, to serve as a reason for an indemnity, to be preceded by the consequential trial for responsibility against the perpetrator of said offense, and Underhill, as it is proven, limited himself in his lifetime to enter an action of responsibility against Gen. José Manuel Hernandez in the city of New York, and both the circuit court and the Supreme Court of the United States decided that General Hernandez's acts were not of such nature as to be properly brought within the jurisdiction of the United States courts. This last judgment of the Supreme Court took place seven years before Underhill's death, and during all those years he never tried to enter before the Venezuelan courts any action of responsibility for the alleged personal offenses, thus perishing all rights of civil action with his own death.

Besides these considerations, it appears, as evidently proven, that Underhill never was subjected to any personal ill treatment, nor to any imprisonment from the moment of the taking of the city of Bolivar by General Hernandez, as chief of the revolutionary forces called "Legalista," until Underhill's departure for Trinidad. The facts mentioned by Underhill in his memorial addressed to the Department of State, and which facts took place on the 11th of August, 1892, in reference to his wife and himself, only prove that there existed an excited feeling of the people of Ciudad Bolivar who tried to prevent the sailing of the Underhills, husband and wife, on the steamer *El Callao*, with the chiefs of the party vanquished at the battle of Buena Vista on the previous day, and while there was not in the city any regularly established authority.

It is not true, as it is asserted by the memorialist, that, in consequence of said happenings, he was put in prison with his wife, as from his own statement and those of the witnesses produced by him, it appears that from the wharf the Underhills, husband and wife, went to their hotel, and stayed in it until their departure from Ciudad Bolivar.

The report made by the commander of the United States man-of-war *Kearsarge*, Mr. A. T. Crowinshield, and addressed to Rear-Admiral J. G. Walker, dated at Trinidad on the 18th of November, 1892, after having obtained from the United States consul at Ciudad Bolivar and from other respectable gentlemen of the same city, all named by the commander in his report, all the necessary information to arrive at the truth of what had occurred at Ciudad Bolivar to the Underhills, very clearly says that far from having the Underhills suffered any humiliating treatment of any kind from General Hernandez they were, on the contrary, protected by him from the feeling of general hostility existing against Underhill among all classes and all citizens of Ciudad Bolivar, according to the very words of the commander of the *Kearsarge*.

This feeling was strengthened by the knowledge that Mr. Underhill had entertained at his residence General Carreras and other officers of the Government's army the day before their departure from Ciudad Bolivar, when they went out to meet the revolutionary forces, which were approaching the city under the command of General Hernandez; [and further] I could not find any evidence to support the statement of Mr. Underhill that he was confined in his own house by orders of the new Government, or that guards were placed about his residence, as he states, for several weeks.

From August 11 to September 23 Mr. Underhill made repeated applications to General Hernandez to leave Ciudad Bolivar by every steamer, but permission was invariably refused; first, on the ground that it would be unsafe for Mr. Underhill to leave on one of Mr. Mathison's steamers; second, that the presence of Mr. Underhill was necessary in order to operate the aqueduct. A passport was, however, offered to Mr. Underhill, provided he would obtain some reliable merchant in Ciudad Bolivar to give security for his return, but this proposition Mr. Underhill declined.

It must be noticed that no mention is made in this report of the commander of the *Kearsarge* of the complaints that, later on, Mrs. Underhill has pretended to adduce in reference to herself for ill treatment and unjust imprisonment as a ground to claim the sum of \$100,000, but it does appear as proven that General Hernandez did offer to said lady a passport for Trinidad, which was delivered on September 27, and she embarked on board the steamer *Bolivar* on the 2d of October next.

In regard to the claim of Mr. Underhill for an indemnity for having been forced to sell his rights of exploitation of the aqueduct of Ciudad Bolivar, having to leave the city, it will be sufficient to read the contents of his letter of September 24, 1892, addressed by said Underhill to Gen. J. M. Hernandez, in answer to his official note, No. 278, in regard to the importance given by that civil and military chief of the city to the work of putting in activity the service of the aqueduct, to maintain the supply of water to the city, in accordance with the contract entered into by Underhill with the Government. In said letter are found the following expressions:

On the 14th of July, when I was obliged to cease pumping, it was my intention to start up again as soon as the works had become dry. But since the occurrence of the 11th of August, and the insults I have received, and your refusal to give me a passport on any steamer that has sailed from this port during the term of six weeks, I have come to the following decisive conclusion pertaining to the aqueduct: *I shall never run the aqueduct for the city of Bolivar again.*

I left the work in perfect order on the 14th day of July, and so they can be found to-day, unless made otherwise by malicious hands.

If it is your right to take possession of that business, you must know and can act accordingly. All buildings outside of the pump house are my private property. My stock and tools contained in the office building is also my private property.

A few days after the date of this letter, on the 18th of October of the same year, Underhill celebrated a contract of sale, in favor of Mr. B. Tomassi, yielding to this latter all his rights in the aqueduct of Ciudad Bolivar for the sum of 6,500 pesos, which he received in cash; this contract of sale appears as made of his own and free will.

It is to be noted, as an appreciation of the character of these facts, the final part of the judgment of the Supreme Court of the United States in the suit brought by Underhill against General Hernandez:

We agree with the circuit court of appeals that the evidence upon the trial indicated that the purpose of the defendant in his treatment of the plaintiff was to coerce the plaintiff to operate his waterworks for the benefit of the community and revolutionary forces, [and that] it was not sufficient to have warranted a finding by the jury that the defendant was actuated by malice or any personal or private motive, and we concur in its disposition of the ruling below. The decree of the circuit court is affirmed.

For the above pointed reasons I am of the opinion that the claim of the widow Underhill per se, and as administratrix of the estate of her deceased husband, should be entirely rejected.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF OF George Freeman Underhill and Jennie Laura Underhill, his wife, claimants,	} Claim No. 15.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

The UMPIRE.

A difference of opinion having arisen between the Commissioners of the United States of North America and the Republic of Venezuela, this question was duly referred to the umpire.

The umpire having fully taken into consideration the protocol as well as the documents, evidence, and agreements, and likewise all the communications made by the two parties, and having impartially and carefully examined the same, has arrived at the following decision:

Whereas in this case there are presented to the Commission two separate claims: One of *George Freeman Underhill* for an indemnity for personal injuries, insults, abuses, and unjust imprisonment as well as for forced sacrifice of property, and one of *Jennie Laura Underhill* for damages for detention, these claims have to be examined separately, and may be separately decided upon.

The claim of George Freeman Underhill arises out of facts and transactions which took place in the months of August, September, and October, 1892.

Now, whereas Underhill died on the 26th day of October, 1901; and

Whereas the first element necessary to establish a claim is a claimant, it has to be evidenced by whom this place as a claimant is now legally filled; and

Whereas, whatever may be the law or the opinion as to the transition of the right to claims that arise from personal injuries, insults, or other offenses, it has at all events to be stated in these cases as well as in cases of claims for financial damages to whom this right to claim was legally transferred by the claimant's death.

Now, whereas in this case the only person who claims this right is Jennie Laura Underhill, the deceased's widow; and

Whereas Jennie Laura Underhill declares that she is entitled to administrate upon her late husband's estate, but

Whereas no proof whatever of this statement is to be found in the document laid before the Commission;

Whereas, on the contrary, she stated on the 17th of June, 1903, that she on that day only "was about to make application to the surrogates' court of the county of New York, State of New York, for letters of administration thereon," while up to this day (October, 1903) no evidence as to the result of this application has reached the Commission; and

Whereas it does not appear whether claimant at his death left a last will or not; whereas, at all events, nothing about the contents of such a last will, if existing, is known to the Commission; and

Whereas it is merely stated in the exhibit that Underhill married in 1886, and that in that year his wife went with him to Ciudad Bolivar, but not where they married or under which law or on what conditions, the Commission has no opportunity to investigate and testify which right might result for Underhill's widow out of the fact of this previous marriage; while out of the declaration sworn to by Jennie Laura Underhill on the 22d of November, 1898, that at that date and at the time of its origin the entire amount of her claim belonged solely and absolutely to her, it seems to appear that during the marriage there was no community of financial interests whatever established by law or by acts between Underhill (now deceased) and his (then) wife, Jennie Laura Underhill.

Whereas, therefore, no evidence exists for the rights of Jennie Laura Underhill to appear as a claimant in the place of her deceased husband; and

Whereas, as it was said before, no one else claims this right before the Commission, the claims of George Freeman Underhill have to be dismissed for want of a claimant.

Before the Mixed Commission under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George Freeman Underhill, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 15.
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MEMORANDUM ON BEHALF OF CLAIMANT.

Jennie Laura Underhill, administratrix of George Freeman Underhill, a claimant above named, desires to submit to the honorable Commission the following considerations:

The umpire herein has found that no claimant representing George Freeman Underhill was before the Commission, for the reason that your memorialist had not submitted to the Commission legal evidence of her appointment as administratrix of said George Freeman Underhill. The claimant was advised that such appointment was not necessary except in case of award, and that under article 1 of the protocol herein, such omission would be one only of a technical nature and that the said provision that claims would be decided on a basis of absolute equity, without regard to objections of a technical nature, would cover the conditions of her case.

She now submits letters of administration regularly granted to herself as administratrix of the estate of said George Freeman Underhill, deceased, by the surrogates' court in the county of Kings, in the State of New York, and asks that the matter be reconsidered by the umpire.

JENNIE LAURA UNDERHILL,
As Administratrix of George Freeman Underhill.

By PATTERSON & SHAW,

Counsel.

Presented by—

ROBT. C. MORRIS,

Agent of the United States.

Before the Mixed Commission under the protocol of February 17,
1903, between the United States of America and
the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Jennie Laura Underhill, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 15.
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MEMORANDUM ON BEHALF OF CLAIMANT.

Jennie Laura Underhill, the claimant above named, desires to submit to the honorable Commission the following considerations:

The umpire herein, in deciding the claim of George Freeman Underhill, of whom the present claimant is administratrix, did not pass upon the claim of your claimant herein. Your claimant therefore respectfully requests that her own claim, which is one entirely distinct and separate from that of her late husband, be considered separately and upon its own merits.

JENNIE LAURA UNDERHILL,
By PATTERSON & SHAW, *Counsel*.

Presented by—
ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George Freeman Underhill and Jennie Laura Underhill, his wife, claimants, v. THE REPUBLIC OF VENEZUELA.	}	Claim No. 15.
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DECISION AND AWARD.

Opinion by Doctor Barge, umpire.

The umpire allows the claimant, Jennie Laura Underhill, the sum of \$3,000 United States gold.

The claim of George Freeman Underhill is dismissed.

NOVEMBER 28, 1903.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Jennie Laura Underhill, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 15.
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The UMPIRE.

A difference of opinion having arisen between the Commissioners of the United States of America and the United States of Venezuela, this case was duly referred to the umpire.

The umpire having taken fully into consideration the protocol and also the documents, evidence, and arguments and likewise all the communications made by the parties and having impartially and carefully examined the same, has arrived at the following decision:

Whereas Jennie Laura Underhill, on or about the 23d day of November, 1898, filed with the Department of State of the United States of America a memorial whereby she claimed damages against the Government of the United States of Venezuela in the sum of \$100,000 for facts that had occurred in 1892, which claim, however, was never presented by the Department of State of the United States of America to the foreign office of the United States of Venezuela; and

Whereas this claim was presented to this Commission by the honorable agent of the United States of America on June 16, 1903; and

Whereas the honorable agent of the United States of Venezuela opposed this claim in his answer dated July 9, 1903; and

Whereas on the 16th of July, 1903, a brief prepared by the attorneys of the claimant was submitted by the honorable agent of the United States of America "in replication," as he says, "to the answer of the Venezuelan Government in the above-entitled case," thus making this brief the replication of the United States of America to the answer of the United States of Venezuela;

Whereas further on claimant says in her claim filed at the State Department: "I claim for assault, insult, abuse, and imprisonment;" and

Whereas the honorable agent of the United States of America in the first brief stated that the claim was for damages for personal injuries, insults, abuse, and false imprisonment;

But whereas the brief of attorneys, that has to be regarded as the replication of the United States of America after the answer of the United States of Venezuela was given, formally states that the claim arises out of unlawful arrest and imprisonment, and afterwards repeats: "Her claim is entirely for damages for detention of her person," it is shown that, after the replication the claim has to be looked upon as a claim for unlawful arrest and detention (which opinion seems to be enforced by the opinion of the honorable Commissioner of the United States of America, when stating his unableness to agree with the honorable Commissioner for the United States of Venezuela, he declares that it appears to him that Mrs. Underhill "is entitled to an award for her unlawful detention"); and

Whereas perhaps practically the admitting of the other causes, named in the claim and in the first brief, would be of no great influence (as the evidence shows that, whatever may or might have been proved to have happened to claimant's husband, George Underhill, there is no proof of any assault, insult, or abuse as regards Jennie Laura Underhill, except what happened in the morning of the 11th of August, 1892, when an irritable and exasperated, ungoverned mob, which believed the Underhills to be partial to the very unpopular party with whose chiefs and officials they were on the point to escape from the city; which conviction was not without appearance of reason, fostered by the fact that the Underhills entertained the commanding general and chiefs of that party on their departure to fight the then popular party called "Legalists," prevented her leaving the city, and assaulted, insulted, and abused her; for which assault, insult, and abuse of an exasperated mob in a riot, the Government, even when admitting that

on that morning there was a *de facto* Government in Ciudad Bolívar—quod non—can not be held responsible, as neither, according to international, national, civil, nor whatever law else anyone can be liable for damages where there is no fault by unlawful acts, omission, or negligence, while in regard to the events of the morning of August 11, 1892, there is no proof of unlawful acts, omission, or negligence on the part of what there might be regarded as local authority, which was neither the cause of the outrageous acts of the infuriated mob, nor in these extraordinary circumstances could have prevented or suppressed them), still, equity to the contending parties seems to require that after the replication of the honorable agent of the United States of America, unlawful arrest and detention be looked upon as the acknowledged cause of this claim.

Now, whereas in investigating the evidence laid before the Commission in this claim, it has to be remembered that, if it be true what the honorable agent of the United States of America remarked about the deposition of General Hernandez (chief of the Government in Ciudad Bolívar after 16th of August, 1892), viz, that this gentleman, notwithstanding his honor, integrity, and high position, had been so intimately connected with the acts out of which this claim arises, that he could scarcely be expected to be able to make an unbiased statement in regard to it, at least the same reflection must be borne in mind respecting the memorials and depositions of Jennie Laura Underhill and her husband which form the main part of the evidence; and

Whereas, according to the brief of the attorneys, the claim arises out of unlawful arrest and imprisonment from August 11, 1892, to October — of that same year; and

Whereas the evidence shows that on the 11th day of August, although the mob shouted, “To the cárcel with the Underhills,” the Underhills were not arrested and brought to the cárcel, but fled to the Union Hotel, where the mob did not follow them, but where a guard was placed before the door; while the evidence does not show whether this guard was placed there to protect the Underhills by preventing the mob from entering the hotel or to prevent Mr. Underhill from leaving the house;

Whereas further on Mrs. Underhill herself declares that in the afternoon of that same day she hastened from the hotel (where she just before declared she had been imprisoned), went to the prefect's office, and afterwards, together with her husband, left that place and returned—not to the hotel, where she declared she was imprisoned, but to her home; and

Whereas, as evidence shows, claimant declared before the United States circuit court, eastern district of New York, that on the 26th of September she went to General Hernández in person—to his house; that afterwards she went to the Government building and saw Hernández there;

Whereas, therefore, no evidence is to be found of claimant being arrested and imprisoned; but, on the contrary, her own declarations rather show that there scarcely can be question of imprisonment while she could leave the hotel and leave the house;

The investigation of the evidence laid before the Commission compels me to come, in regard to claimant, to the same conclusion as that arrived at in regard to her husband, by Commander Crowninshield, of the United States Navy (after investigating the case at the place

itself, and almost immediately after the facts occurred, and after hearing the prominent citizens of Ciudad Bolívar by him enumerated, for the most part foreigners), that no evidence of imprisonment could be found;

Wherefore the charge against the Government of Venezuela of claimant's unlawful arrest and imprisonment must be rejected.

But as furthermore claimant claims award for damages on the charge of detention of her person;

And whereas without any arrest and imprisonment detention takes place when a person is prevented from leaving a certain place, be it a house, town, province, country, or whatever else determined portion of space; and

Whereas it is shown in the evidence that claimant wished to leave the country, which she could not do without a passport being delivered to her by the Venezuelan authorities, and that from August 14 till September 27 such passport was refused to her by General Hernández, then chief of the government of Ciudad Bolívar, and the fact that claimant was detained by the Venezuelan authorities seems proved; and

Whereas whatever reason may or might have been proved to exist for refusing a passport to claimant's husband, no reason was proved to exist to withhold this passport from claimant; and

Whereas the alleged reason that it would not be safe for the Underhills to leave on one of Mr. Mathinson's steamers can not be said to be a legal reason, for if it be true that there existed any danger at that time, a warning from the Government would have been praiseworthy and sufficient; but this danger could not give the Government a right to prevent Mrs. Underhill from freely moving out of the country if she wished to risk the danger, while, on the other hand, it might have been said that the steamer being public means of transfer, it would have been the duty of the Government to protect the passengers from such danger on the steamers, when existing;

Whereas, therefore, it is shown that Mrs. Underhill was unjustly prevented by Venezuelan authorities from leaving the country during about a month and a half, the claim for unlawful detention must be recognized.

And whereas for this detention the sum of \$2,000 a month, making \$3,000 for a month and a half, seems a fair award, this sum is hereby granted.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of the United States of America, on behalf of Jennie Laura Underhill, claimant, against the Republic of Venezuela, No. 15, the sum of \$3,000, United States gold, is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America, in accordance with the provisions of the convention under which this award is made.

The claim of George Freeman Underhill is dismissed.

HARRY BARGE, *Umpire.*

Attest:

EDO. CALCAÑO SANAVRIA,
Secretary on the part of Venezuela.

RUDOLF DODGE,
Secretary on the part of the United States of America.

Delivered November 28, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF OF the administratrix and heirs at law of Giovanni Turini, deceased, the Gorham Manufacturing Company, and Joseph Carabelli, claimants,	} No. 16.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of the administratrix and heirs at law of Giovanni Turini, the Gorham Manufacturing Company, and Joseph Carabelli, jointly interested for breach of a written contract.

Giovanni Turini, now deceased, was a naturalized citizen of the United States. The Gorham Manufacturing Company is a corporation existing under the laws of the State of Rhode Island, and a citizen of the United States. Joseph Carabelli is a naturalized citizen of the United States. The claim made in which the parties are jointly interested arises out of the following facts:

On July 28, 1896, an agreement was made between the secretary of public works of the United States of Venezuela and Giovanni Turini, a sculptor of New York City, for the execution by the latter of three statues, to wit, an equestrian statue of General Paez and a statue of Liberty, both to be erected at the city of Caracas, and a statue of General Bolivar, destined to be presented to the city of New York by the Venezuelan Government.

This contract was duly authorized by the Venezuelan Government. The price to be paid was \$43,000, payable in seventeen monthly payments of \$2,300 per month and one payment besides of \$3,900. The statues of Paez and of Liberty were to be delivered on board ship at the port of New York; the first, two months prior to April 2, 1897; the second, two months prior to the 5th day of July, 1897. The first two statues were to be executed in conformity with sketches delivered by Turini to the secretary of public works. The statue of Bolivar was to be a replica or copy of the one erected in the Plaza of Bolivar at Caracas with one change, to wit, that it should be one-fourth larger.

Pursuant to this contract, Turini executed the statue of General Paez, together with the pedestal, and the same has long been ready for delivery. Considerable work was also done upon the other two statues, the models being completed ready to be cast in bronze. The work remaining to be done represents a cost of only \$11,000.

There has been paid by Venezuela, on account of this contract, in all, the sum of \$8,130, the last payment being made in April, 1897. The nonpayment of the stipulated monthly sums was alleged to be and was a breach of the contract on the part of the Government of Venezuela.

Turini incurred liabilities to the Gorham Manufacturing Company to the extent of \$9,000, for which they have received an assignment from him of that proportionate interest in the contract. He has also incurred other liabilities to the amount of \$9,350 in connection with the work, among them being the liability of Joseph Carabelli, shown by the assignment submitted.

The excuse originally submitted by the Government of Venezuela for not carrying out the contract was that the National Society of Sculpture of New York had refused to accept the proposed statue of Bolivar as not proper from an artistic standpoint for erection in Central Park, New York, where it was the intention of the Venezuelan Government to dedicate the same, and that the Venezuelan Government fears the other two statues would also be lacking in artistic merit. The evidence shows that this position of the Venezuelan Government must now be abandoned. The municipal art commission of New York City has, in a letter to Mr. Turini of May 25, 1899, expressly approved his design of the statue of General Bolivar to be placed in Central Park.

Moreover, the refusal of the municipal art commission to authorize the erection of this statue in Central Park would not be any evidence of the nonperformance of the contract on the part of Turini. The contract provided the statue of Bolivar to be erected in New York should be an exact replica of the one in Caracas, and it nowhere appears or is claimed that it was not. The other statues were to be executed in conformity with sketches made by Turini, and it nowhere appears that the work done upon them was not in accordance with such sketches.

The case therefore presents absolutely no cause or excuse for a breach of the contract on the part of the Government of Venezuela, which breach is clearly established.

The claimants are therefore entitled to relief, and it clearly appears from the evidence that the damage would be at least \$23,870, to wit, the contract price, deducting the amount paid and the \$11,000 which it would cost to complete the work.

Interest should be allowed from the date of the breach of the contract upon this written contractual obligation of the Venezuelan Government. The interest amounts to \$4,709.55, making the total amount due \$28,579.55.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

The Gorham Manufacturing Company and Joseph Carabelli, as successors in interest of G. Turini. Claim No. 16.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied the claim presented by the Gorham Manufacturing Company and Joseph Carabelli, American citizens, in which they state that they are successors in interest of G. Turini, and respectfully shows to the tribunal:

The present claim arises out of an alleged violation on the part of Venezuela of a contract entered into between the minister of public works and the said Turini for the construction of three statues of bronze, one of which was destined for Central Park in the city of New York.

The statement of facts in the matter is faithfully set out in the report which, at the instance of the undersigned, the department of public works has made, and the original of which is annexed to this

answer. The undersigned does not think, therefore, that he should dwell upon a statement of the facts and circumstances which gave rise to the claim, and confines himself to the discussion of the mere question of law.

The successors in interest of Turini allege the nonperformance of the contract entered into by their predecessor and demand the payment of sums of money due on account of that agreement; the Government of Venezuela sets forth a ground of complaint similar to that alleged on the part of Turini. The dispute therefore has always been of a concrete nature and ought, per force, to be confined to the two parties.

The assignment to third parties, made by Turini of the rights which he might have had, is therefore an assignment of a right in litigation which can not be settled, as has already been said, except between the original contractor, or, in case of his failure to do so, his heirs and the Government of Venezuela.

The fiction of law which perpetuates in the heir the personality of *de cuius* could not be extended to his successors in interest by assignment or purchase, since the personal objections which would operate against the former could not legitimately be set up against the latter. This is a principle of common law sanctioned by the legislation of all civilized countries.

Neither Turini nor his heirs have claimed or set up in an action the rights which by the aforesaid contract they might have succeeded to against Venezuela, and which a judgment pronounced by the competent tribunals of this latter can alone confirm.

Moreover, it may be observed that the position of the assignee of rights in litigation is viewed unfavorably by every legislation. Pothier calls him "a hated purchaser of suits." Portalis says "that he who buys a lawsuit does so with the object of vexing the debtor and enriching himself at his expense."

The Government of Venezuela is not obliged to pay the claim of the Gorham Manufacturing Company nor of Joseph Carabelli, to whom it has never been bound by any juridic tie or relation.

In consequence, therefore, the claim, as it has been presented, is inadmissible and ought to be so declared.

Caracas, July 8, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

<p>THE UNITED STATES OF AMERICA, ON BEHALF of the administratrix and heirs at law of Giovanni Turini, deceased, the Gorham Manu- facturing Company, and Joseph Carabelli, claimants,</p> <p style="text-align: center;">v.</p> <p>THE REPUBLIC OF VENEZUELA.</p>	}	No. 16.
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REPLICATION ON BEHALF OF THE UNITED STATES.

In the answer of Venezuela to the above claim it is contended that the claimants, the Gorham Manufacturing Company and Joseph Carabelli, as assignees of Giovanni Turini, are not entitled to receive an

award because such an assignment amounts to a transfer of rights in litigation which can not be admitted.

With respect to the claim made on behalf of the administratrix and the heirs at law of Giovanni Turini the Venezuelan Government makes no specific reply, but the honorable agent of that Government does say, in his answer:

The assignment to third parties, made by Turini, of the rights which he might have had, is, therefore, an assignment of a right in litigation which can not be settled, as has already been said, except between the original contractor, or, in case of his death, his heirs and the Government of Venezuela.

Annexed to the answer the honorable agent has submitted a report made by the minister of public works to him with respect to the circumstances concerning the origin of the above-entitled claim. In this report there is a statement of facts which is essentially in accord with that made in the brief submitted on behalf of the United States in this matter, and may, therefore, be accepted as an admission of such facts on the part of the Venezuelan Government.

I.

The contention of the honorable agent of the Venezuelan Government that the claims of the Gorham Manufacturing Company and Joseph Carabelli are not admissible because an assignment in such case amounts to the transfer of a right in litigation is not well founded. For a right in litigation to be transferred, we must presuppose that such litigation existed; but there is no evidence of any suit brought on the part of Mr. Turini before these assignments were made to the respective claimants. That these assignments transferred right to a chose in action there can be no doubt; but the objection raised by the honorable agent of Venezuela to the transfer of rights in litigation can not avail when there is question of a transfer of a chose in action. The respective claimants here have a right to prosecute their claims in the name of Mr. Turini to the amount of their respective assignments.

II.

With respect to the other claimants, namely, the administratrix and the heirs at law of Giovanni Turini, it is to be noted that their status as administratrix and heirs at law has been fully established as is shown by the evidence submitted in this case. The agent of the Venezuelan Government himself admits that the heirs at law or the legal representatives of Mr. Turini would have the right to prosecute this claim against the Government of Venezuela and in no way questions the jurisdiction of this Commission to pass upon such claim. Such a claim has been made on the part of the heirs of Giovanni Turini, as will appear from the papers on file, and is amply supported by the proofs produced and the admission of the Venezuelan Government.

An award should be made for the full amount claimed with the legal interest at 3 per cent per annum from the date of the breach of contract on the part of the Venezuelan Government.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

<p>THE UNITED STATES OF AMERICA, ON BEHALF of the estate of Giovanni Turini, deceased, claimant, the Gorham Manufacturing Com- pany, the Lyons Granite Company, and Joseph Carrabelli, intervenors, v. THE REPUBLIC OF VENEZUELA.</p>	}	No. 16.
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BAINBRIDGE, *Commissioner*:

On July 28, 1896, a contract was executed between the secretary of public works of the United States of Venezuela, fully authorized by the President of the Republic, and Giovanni Turini, sculptor, residing in New York City, and a naturalized citizen of the United States, whereby it was agreed:

1. On the part of Giovanni Turini that he would execute for the Government of Venezuela three statues, one equestrian of Gen. Jose Antonio Paez, another of Liberty, and a third of Bolivar, the latter destined to be presented by the Government of Venezuela to the city of New York; that he would deliver the statues of Paez and Liberty on board ship at the port of New York two months before the day set for the inauguration of the same, being, for the first statue, April 2, 1897, and, for the second, July 5, 1897; that these two monuments would be made in conformity with the executive decrees of July 3 and 4, 1896, in reference thereto, and also in conformity with the sketches of said statues delivered by Turini to the secretary of public works; that the equestrian statue of Bolivar would be a réplica or copy of the statue of Bolivar erected in the Plaza Bolivar, in Caracas, with one change, that the dimensions of the one to be built should be one-fourth larger than natural size; that the materials for the pedestal as well as for the statue would be of the same kind as those used for the aforesaid monument, which was to serve as a model; that Turini would deliver the statue of Bolivar to the representative of Venezuela at New York, would engrave on the pedestal such inscription as the Government of Venezuela might suggest to him, and would place said statue in New York at the spot to be designated.

2. On the part of the Government of Venezuela that it would pay Turini for the execution of the three statues the sum of \$43,000 gold or 227,900 bolivares, in seventeen monthly payments of \$2,300 or 12,190 bolivares per month, besides one monthly payment of \$3,900 or 20,670 bolivares; that the first monthly payment would be made August 1, 1896, and that it would pay the freight and expenses of erection of the statues of Paez and Liberty.

It was further agreed that at the time of shipment of the statues of Paez and Liberty the Venezuelan consul at New York must certify that they had been properly executed, were in good condition, and well packed.

Pursuant to this contract:

1. Turini executed the statue of General Paez together with the pedestal, performed considerable direct work upon the statue of Liberty and that of Bolivar, the model of both being completed and

ready to be cast in bronze, and completed the pedestal for the statue of Liberty.

2. The Government of Venezuela paid to Turini altogether the sum of \$8,130, the last payment being made in April, 1897, in the sum of \$1,850.

By the terms of the contract the Government of Venezuela was to pay seventeen monthly installments of \$2,300 each, beginning August 1, 1896, besides one monthly payment of \$3,900. The contract was broken by Venezuela within four months from August 1, 1896, by its failure to make the stipulated payments. Nevertheless, Turini proceeded with the work and appears to have accepted the payment of \$1,850 made in April, 1897. But any failure of Turini to complete and deliver the statues at the time specified in the contract was clearly due to the prior failure of the Venezuelan Government to make the monthly payments as provided therein. This provision in the contract may have been and probably was the very reason why Turini agreed to complete and deliver the statues within the time specified.

In 1898 the Venezuelan Government claimed that it could not and would not accept the statue of Bolivar because the National Society of New York declared the statue to be without artistic merit; and also that, fearing that the statue of General Paez might be lacking the "necessary artistical requisites," it should be submitted to the judgment of a jury of artists, without the award of which the Government could not take into consideration Mr. Turini's claim.

But Turini did not agree to execute for Venezuela a statue of Bolivar which would be acceptable to the National Society of Sculpture of New York, nor did he agree to execute a statue of General Paez, subject to the judgment of a jury of artists. He agreed to execute statues of Paez and of Liberty in conformity with the executive decrees of July 3 and 4, 1896, in reference thereto, and in conformity with the sketches of said statues delivered by him to the secretary of public works. He agreed to execute a statue of Bolivar which would be a replica or copy of the one in the Plaza Bolivar, in Caracas, the dimensions, however, to be one-fourth larger than natural size.

It is not claimed that Turini's work does not comply as to artistic merit with his agreement, but it is sought to measure it by standards other than those expressed in the contract. If the Venezuelan Government desired work done acceptable to the National Society of Sculpture of New York, or subject to the approval of a jury of artists, it should have so stipulated. Nor can it be assumed that Mr. Turini would have agreed to do such work at the price designated in the instrument before us.

The duty of the Commission is to determine the rights and obligations of the parties under the contract as it is, not as it might have been. And the true measure of damages in a case like this, where one engaged in the performance of a contract is prevented by the employer from completing it, is the difference between the price agreed to be paid for the work and what it would have cost the party employed to complete it, deducting, of course, the amount already paid.

Here the price agreed to be paid is the sum of \$43,000, of which \$8,130 have been paid. The evidence shows that it will cost about the sum of \$11,000 to complete the work. The difference is the sum of \$23,870. Interest should be allowed on this sum at the rate of 3 per

cent per annum from January 1, 1898, to December 31, 1903, the anticipated date of the final award by this Commission.

The estate of Giovanni Turini is therefore entitled to an award in the sum of twenty-eight thousand one hundred and sixty-six and $\frac{1}{100}$ dollars gold.

Giovanni Turini died August 27, 1899, and thereafter on September 9, 1899, letters of administration of his estate were duly granted to his widow, Margaret Turini, by the surrogate of the county of New York.

At the time of Turini's death his estate was and still is liable for the following debts which were incurred by him in carrying out his contract with the Government of Venezuela:

(1) To the Gorham Manufacturing Company, the sum of \$6,319, with interest thereon at 6 per cent per annum from July 1, 1897.

(2) To Joseph Carrabelli, the sum of \$3,095, with interest thereon at 6 per cent per annum from October 22, 1898.

(3) To the Lyons Granite Company, the sum of \$2,358.45, with interest at 6 per cent per annum from October 1, 1899.

The above-named parties, as intervenors in this claim, should be protected to the extent of their proportionate interests in the distribution of the award herein made to the estate of Giovanni Turini, deceased.

Filed August 4, 1903.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF OF the administratrix and heirs at law of Giovanni Turini, deceased, the Gorham Manufacturing Company, and Joseph Carabelli, claimants,	} No. 16.
v.	
THE REPUBLIC OF VENEZUELA.	

Doctor PAUL, *Commissioner*:

This claim is presented by the Government of the United States on behalf of the administratrix and heirs at law of Giovanni Turini, deceased, the Gorham Manufacturing Company, and Joseph Carabelli, jointly interested, for breach of a written contract. The amount of the claim is \$28,579.55, interest included.

Giovanni Turini, now deceased, was a naturalized citizen of the United States. The Gorham Manufacturing Company is a corporation existing under the laws of the State of Rhode Island, and a citizen of the United States, and Joseph Carabelli is a naturalized citizen of the United States.

The claim arises out of the following facts:

On July 28, 1896, an agreement was made between the secretary of public works of the United States of Venezuela, fully authorized by the President of the Republic, and Giovanni Turini, sculptor, residing in the city of New York, represented by Messrs. J. Boccardo & Co., for the execution of three statues, one equestrian of General José Antonio Paez, another one of "Liberty," both to be erected in the city of Caracas, and a third one of General Bolivar, destined to be presented to the city of New York by the Venezuelan Government.

Turini bound himself to execute the aforesaid statues for the amount of \$43,000 gold, payable by the Government of Venezuela, at the city of Caracas, to whomsoever should be authorized to represent Turini, in seventeen monthly payments of \$2,300 per month, and one monthly payment besides of \$3,900, the first monthly payment to be made at the office of Messrs. J. Boccardo & Co., on the 1st day of August, 1896.

Turini also bound himself to deliver the statues of Paez and of Liberty, on board ship, at the port of New York, two months before the day set for the inauguration of the same, being for the first statue the 2d day of April, 1897, and for the second the 5th day of July, 1897. These monuments had to be made in conformity with the decrees of the executive of the 3d and 4th days of July of the same year, 1896, in reference to the same and also in conformity with the sketches of said statues delivered by Turini to the secretary of public works. The statue of Bolivar was to be a replica, or copy, of the one erected in the Plaza Bolivar at Caracas, with one change, to wit, that it should be one-fourth larger than natural size, the material for the pedestal as well as for the statue to be of the same kind as those used for the aforesaid monument, which would serve as a model.

It was also agreed that at the time of the shipment of the two monuments destined to Caracas, the Venezuelan consul at New York had to certify that the same had been properly executed and were in good condition and well packed.

The memorial of Turini shows that pursuant to said contract he executed the statue of General Paez, together with its pedestal, and the same had been ready for delivery for many months. He also states that he performed considerable direct work upon the statue of Liberty and on the statue of General Bolivar, the model of both statues being completed and ready to be cast in bronze, and that the pedestal for the statue of Liberty was also completed; but by reason of the nonpayment of the moneys, as stipulated in the contract, further work on these statues was suspended.

Turini acknowledges that he had received from the Government of Venezuela the sum of \$8,130, gold, on account of his contract, the last payment having been made in April, 1897, by General Crespo (then president), and being the sum of \$1,850. Under the contract Turini should have received in April, 1897, the sum of \$20,700.

In the execution of the contract Turini incurred a liability to the Gorham Manufacturing Company, and the memorialist affirms that they had received from him an assignment to the extent of \$9,000, of the payments due him under the contract, with power to collect same. Turini also affirms that he incurred other liabilities, in and about the prosecution of the work, to Joseph Carabelli, amounting to \$3,095.97, for which sum Carabelli obtained an assignment, copy of which has been submitted to this Commission.

Margaret Turini, as administratrix of Giovanni Turini, deceased, on the 27th of August, 1899, addressed the Secretary of State of the United States of America. On the 11th of May, 1903, a supplemental memorial was filed with the Department of State, in which, after making an exposition of the indebtedness incurred by the said Giovanni Turini, in carrying out his contract with the Government of Venezuela; with the Gorham Manufacturing Company, Joseph Carabelli, and the Lyons Granite Company, and other expenses incurred by said Turini for plaster and modeling and labor, affirms that the statue of

General Paez has been cast in bronze by the Gorham Manufacturing Company, and since 1897 has been ready for delivery; that the model of the statue of Liberty is at the factory of the Gorham Manufacturing Company, ready to be cast in bronze; that the model for the statue of General Bolivar was fully completed by the said Giovanni Turini in his lifetime. That its artistic merits were passed upon by the municipal art commission of the city of New York, as appears by letter of its president to the said Turini, dated May 25, 1899. That said Turini received in all from the Government of Venezuela the sum of \$8,130, leaving an unpaid balance amounting to the sum of \$34,870. That it has been estimated that it would cost the sum of about \$11,000 to complete the statues of Liberty and Bolivar, and in case the Venezuelan Government should prefer not to have the statues completed, deducting the sum of \$11,000 from the \$34,870, there would be a balance due of \$23,870, to which should be added either interest thereon from January 1, 1898, or the interest on the said debts incurred to the Gorham Manufacturing Company, Joseph Carabelli, and the Lyons Granite Company, which item of interest, in the aggregate, amounts to the sum of \$3,623.36, and, added to the said sum of \$23,870, makes a total sum of \$27,493.36.

As it appears from the above-stated facts, the points submitted to the decision of this Commission spring from the contract celebrated between the Government of Venezuela and Giovanni Turini for the execution of certain sculptorial works, and the case must be disposed of as being that of the administratrix and the heirs at law of Giovanni Turini, sufficiently authorized to prosecute this claim against the Government of Venezuela.

The assignments obtained by the Gorham Manufacturing Company and Joseph Carabelli only gives to the creditors the right to collect the amount of their credits from what the Government of Venezuela might have to pay to the administratrix and heirs at law of Giovanni Turini for the responsibilities incurred by said Government by reason of the contract celebrated with Turini.

In his answer the honorable agent of the Government of Venezuela refers to the merits of a memorial submitted to him by the minister of public works, containing the recital of the facts recorded in his department in reference to the above-mentioned contract with Turini and the sundry incidents occurred thereon. The honorable agent of the United States in his replication admits that in that memorial the statement of facts is essentially in accord with that made in the brief submitted on behalf of the United States in this matter.

From the narrative of those facts it appears that several months after the beginning of the work which Turini undertook to execute the Venezuelan consul in the city of New York, charged with the inspection of the statues, reported on June 22, 1897, to the Venezuelan Government that he had seen the model in clay of the statue of Bolivar uncompleted; that they were working on the bronze casting of the statue of Paez, and were making the miniature in clay of the statue of Liberty, and, consequently, he could not judge of the artistic merits and other conditions of the works.

Turini, on July 12, 1897, addressed a private letter to the President of the Republic, asking for the payment of \$10,000 promised him, inasmuch as to that date there was due him more than \$20,000. This letter was answered by the minister of public works, who informed him

that the President would personally attend to his request and would give a favorable solution to it as soon as the financial situation would allow it.

The terms of that correspondence proves sufficiently that the suspension of payment of several monthly sums did not constitute a breach of contract, because Turini did not take the delay of payment as a resolutory cause, nor did he stop the execution of the work for that motive in order to put forward his claim against the Government of Venezuela. At this stage of events, and in the month of September of the same year, the Government of Venezuela had notice that the National Society of Sculpture of the City of New York refused to give its approval to the clay model of the liberator's statue, and consequently that the board of parks of the same city would not give its permit for the erection of the statue as then modeled. The Venezuelan Government having requested Turini to advise the reason of the rejection of the model, to send information about all the particulars pertinent to the execution of the statues, and about the report of the National Society of Sculpture, he answered that having invited the said society to examine the model in clay of the liberator's statue, he was notified one month after that the statue could not be accepted, but that he succeeded in removing such difficulties after speaking with Mr. Strong, president of the park commission, who agreed to have the statue accepted, provided it was an exact copy of the original existing in Caracas; and finally, that in that same month he would finish the new model in plaster, and the statue should not be cast until approved by the artists.

The terms of the official report addressed by the National Society of Sculpture to the board of public parks of New York reads as follows:

That the clay model for the statue of Bolivar, such as it appears at the sculpture's study, does not have the conditions of *artistic excellence required to be erected in a public place or park of the city*, and consequently does not recommend its acceptance.

After these facts Turini sent on November 20, 1897, a demonstrative account of the sums pretended the Government of Venezuela owed him for his contract, to wit:

	Bolivars.
For the statue of General Paez	106,000
For the statue of Liberty	71,900
For the statue of Liberator	50,000
Total	227,900

From that total sum Turini made the deduction of Bs. 50,000 for the statue of the Liberator, *being in doubt at that time* the acceptance of the model by the board of public parks of New York and having to wait for the Government's order to cast it in bronze. Turini also stated that he had received the sum of Bs. 43,125, leaving a balance of Bs. 134,775 for the statues of Paez and Liberty, which he said would soon be finished and ready to be delivered on board ship.

It was not until May 25, 1899, that C. T. Barney, president of the artistic municipal commission, sent a letter to Turini, informing him that in session of the day before the Commission had approved the new model of the statue of General Bolivar, and on July 31, of the same year, the Government of Venezuela addressed Turini in reference to a note of Messrs. Olney & Comstock, Turini's attorneys, about the acceptance by the artistic commission of New York of the modified

model of the statue of Bolivar, and gave its conformity for its execution. One month after this authorization, on the 27th day of August, 1899, Giovanni Turini died in the city of New York, leaving the statue of General Paez cast in bronze by the Gorham Manufacturing Company and ready for delivery, with its pedestal constructed by Joseph Carabelli; leaving also two clay models of the statue of Liberty and of General Bolivar, and a granite pedestal with inscriptions thereon for the statue of Liberty, constructed by the Lyons Granite Company.

From the aforesaid, and a just appreciation of the facts, comes forth the following conclusions:

First. There was no breach of the contract on the part of the Government of Venezuela by the nonpayment of the stipulated monthly sums, as alleged, because Turini, with perfect knowledge of that fact, did not make it a cause of breach and pursued the execution of the works, relying on the promises which were made to him that the payment of the sum overdue, in conformity with the agreement, should be paid as soon as the financial situation would allow it. It must be taken into consideration that the price of an artistic work is not properly due until finished and accepted as satisfactory by the person who ordered the execution of the same, and that the monthly advances offered to Turini on account of the prices of the statues were only a facility afforded Turini in order to help him in the performance of his duties, as enterpriser, and he was at any time at liberty to renounce and not take advantage of it.

Second. The incidental and very important event of the refusal of the clay model of the Liberator's statue by the board of public parks of New York, which took place in August of the year 1897, having as a motive for such refusal the circumstance that the clay model of the statue of Bolivar, such as it appeared at the sculptor's study, did not have the conditions of *artistic excellence* required in such monuments to be erected in a public place or park, had the consequence of interrupting the final execution of the Liberty and Liberator's statues; giving occasion to considerable correspondence between the Government of Venezuela and Turini about the securities asked for by the said Government in reference to the artistic merits of all the statues, and was also the cause of a proposition made by Turini to the Venezuelan Government, on November 20, 1897, to withdraw from the whole amount of his contract the sum of Bs. 50,000, price estimated by him for the statue of General Bolivar, and of an offer to deliver the statues of General Paez and Liberty, all completed and free on board at the port of New York, for the sum of Bs. 134,775, deduction having been made of Bs. 43,125 already received by him.

Afterwards, on the 22d of March, 1899, another proposition was made by Mr. Oldrini, Turini's attorney, to the Venezuelan Government, regarding the delivery of the statue of General Paez and its pedestal, not on board, but at the factory, and to deliver the pedestal of the statue of Liberty, the clay model of this last and its casted parts, Turini keeping the clay model of Bolivar's statue, all for the sum of \$25,000 to be paid, \$15,000 cash down and the balance in monthly instalments, without taking into consideration the \$8,130 already paid to Turini. To this proposition the Government of Venezuela answered on the 2d day of June, 1899, formulating a counter proposition to wit: To pay \$15,000 for the statues of General Paez and Liberty all completed, in partial monthly payments of \$3,000 from the last day of said

month of June. This counter proposition was not accepted by Turini's attorneys, and on the 31st of July the Government addressed again Messrs. Olney & Comstock, after the receipt of the final approval by the New York artistic commission of the new clay model of the statue of General Bolivar, requesting that sketches or reproductions of the models for the statues of General Paez and Liberty be sent, for examination as to the artistic conditions of the one and the other, in order to make a definite arrangement about their prices and payments. In the meantime Messrs. Olney & Comstock, on behalf of Turini, addressed the Government of Venezuela promoting the execution of the contract under the following conditions: That the Government would accept the three statues referred to in the original contract for the price stipulated of \$43,000, less \$8,130 already paid, and the balance of \$34,870 to be paid, \$15,000 cash down and \$19,870 in monthly payments of \$3,000 each. To this last proposition the Government did not give any answer, and the death of Turini, which occurred one month later, on the 27th of August, 1899, caused the whole affair to remain at a stand point. As this matter stood at the time of the death of Giovanni Turini, it is apparent that there was not any definite understanding established between the Government of Venezuela and Giovanni Turini, neither about the acceptance of the models for the statues of General Paez and Liberty nor about the price to be paid for the execution of the same; there was only an understanding for the casting in bronze of the statue of General Bolivar by reason of the acceptance by the Venezuelan Government of the modified model executed by Turini and approved by the president of the municipal art commission of the city of New York.

Third. The death of Giovanni Turini, which took place before the completion of the statues of Liberty and General Bolivar, is a resolute cause of the original contract between the Government of Venezuela and Turini, in reference to the execution pending at the time of Turini's death, of the statues of Liberty and of the Liberator. That resolute cause entitled the administratrix and heirs at law of Turini to be paid, in proportion to the price agreed, for the work done, and for the value of materials employed and expenses incurred thereon, providing the work done and materials employed were of some use to the other party. In reference to the pedestal for the statue of Liberty, constructed by the Lyons Granite Company, it is not apparent that it could be of any use to the Government of Venezuela to have it without the statue, because in the matter of statues the material pedestal is of very secondary importance. The work executed by Turini in modeling the statue of Liberty and of the Liberator, and also the expenses incurred in such works, which amounted to the sum of \$1,250, must be recognized as good title for compensation. For that motive and in consideration of the sum of \$8,130 received by Turini during his lifetime, on account of the whole price of the statues and pedestals, a deduction of \$5,000 must be made from the \$8,130 as compensation for the personal work of the sculpture and expenses incurred by him in the modeling of said statues, thus leaving the sum of \$3,130 to be disposed of as determined in the following conclusion.

Fourth. The completion by Giovanni Turini of the statue of General Paez and its pedestal, entitles the administratrix and heirs at law of Giovanni Turini to the payment of the price of that work by the Government of Venezuela, provided that the sculptural work should

be in perfect accordance with the terms specified in article 5 of the original contract between the minister of public works of the Venezuelan Government and Giovanni Turini, dated on the 28th of July, 1896, and besides that the materials employed and the artistic execution prove satisfactory, as is necessary in all works of this kind.

The Commission not having at their disposal the necessary elements to decide on these technical points, neither being it in its possibility to fix the price for the statue of General Paez and its pedestal in proportion to the full amount of the contract, it is advisable to refer both parties in this claim to the following decision:

The Government of Venezuela is not obliged to receive the pedestal for the statue of liberty, nor to pay its value, but a compensation is granted in favor of the administratrix and heirs at law of Giovanni Turini, in the sum of \$5,000, to be deducted from the \$8,130 received by the *cujus* for his labor and the expenses incurred in modeling the statues of liberty and General Bolivar; the clay models for both statues to become the property of the Government of Venezuela.

The Government of Venezuela and the administratrix and heirs at law of Giovanni Turini are bound to appoint, by mutual agreement, an expert or a commission of three experts, named one by each party and the third by the two experts named. And said expert or commission will proceed to examine whether the statue of General Paez and its pedestal are constructed in accordance with the terms of article 5 of the aforesaid contract, dated July 28, 1896, and if they give sufficient satisfaction in regard to their material and artistic merits; the commission will fix in such case the value of the monument in proportion to the total amount fixed in the original contract for the three statues and the two pedestals, two of which had to be put on board ship by Turini at the port of New York, and the third one to be erected at Turini's expense in Central Park, New York City. After fixing in such manner the sum that the Government of Venezuela should have to pay to the administratrix and heirs at law of Giovanni Turini for the value of the statue of General Paez and its pedestal, the Government of Venezuela is entitled to deduct from that price the sum of \$3,130 as balance due by the administratrix and heirs at law of Turini on the sum of \$8,130 already paid by the Venezuela Government during the lifetime of Turini; and the assignees, the Gorham Manufacturing Company and Joseph Garabelli, are entitled to exercise their rights for collecting from the Government of Venezuela from the balance due to the administratrix and heirs at law of Giovanni Turini, if any, up to the amount of \$6,319 on the part of the Corham Manufacturing Company, and of \$3,095 on the part of Joseph Garabelli. Any balance left for the price definitely fixed by the decision of the experts to belong to the administratrix and heirs at law of Giovanni Turini.

In no other way, it appears to me, can this Commission dispose of the claim.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

<p>THE UNITED STATES OF AMERICA, ON BEHALF OF the administratrix and heirs at law of Giovanni Turini, deceased, the Gorham Manufacturing Company, and Joseph Carabelli, claimants, v. THE REPUBLIC OF VENEZUELA.</p>	}	No. 16.
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Doctor BARGE, *umpire*.

A difference of opinion arising between the Commissioners of the United States of America and the United States of Venezuela, this case was duly referred to the umpire.

The umpire having fully taken into consideration the protocol and also the documents, evidence, and arguments, and likewise all other communications made by the two parties, and having impartially and carefully examined the same, has arrived at the decision embodied in the present award.

Whereas, on July 25, 1896, an agreement was made between the secretary of public works of the United States of Venezuela, fully authorized by the President of the Republic, and Giovanni Turini, sculptor, citizen of the United States of America, residing in the city of New York, represented by Messrs. J. Boccardo & Co., Caracas, which agreement reads as follows:

Conditions agreed upon between the secretary of public works of the United States of Venezuela, fully authorized by the President of the Republic, and Giovanni Turini, sculptor, residing at the city of New York, Dougan Hill, Richmond County, of the United States of North America, represented by Messrs. J. Boccardo & Co., merchants of this city, as it will be further stated, for the execution of three statues, one equestrian of Gen. José Antonio Paez, another of La Libertad, both to be erected in the city of Caracas, and a third one, El Libertador, destined to the city of New York.

First. Giovanni Turini binds himself to execute the aforesaid statues for the amount of \$43,000 gold, or say Bs. 227,000, which is its equivalent at the rate of exchange of (Bs. 5.30) to \$1, which amount the Government of Venezuela will pay at the city of Caracas to Turini, or whomsoever shall be authorized to represent him, in seventeen monthly payments of \$2,300 per month, or Bs. 12,190, and one monthly payment besides of \$3,900, or say Bs. 20,670.

Second. Giovanni Turini names as attorneys with power to represent him in this city, Messrs. J. Boccardo & Co., merchants of the same; said power accompanies this agreement so as to enable them to represent said Turini before the National Government in this arrangement, and to collect the payments for his account in accordance with the obligations this Government binds himself.

Third. The first monthly payment will be made at the office of Messrs. J. Boccardo & Co., the 1st day of August next.

Fourth. Turini binds himself to deliver the statue of Paez and of La Libertad on board ship at the port of New York, two months before the day set for the inauguration of the same being for the first statue the 2d day of April, 1897, and for the 2d the 5th day of July, 1897.

Fifth. These monuments will be made in conformity with the decrees of the executive of the 3d and 4th of July of the present year in reference to the same, and also in conformity with the sketches of said statues Turini has delivered to the secretary of public works.

Sixth. The equestrian statue of El Libertador which the National Government offers or presents to the city of New York to replace the one existing at present in that city at the Central Park will be a replica or copy of the one erected to the memory of the said Libertador in the Plaza Bolivar of this capital with only one change, that the dimensions of the one to be built will be one-fourth larger than natural size. The materials for the pedestal as well as for the statue will be of the same kind as those used for the aforesaid monument, which will serve as a model.

Unique condition.—Giovanni Turini binds himself to deliver this monument to the representative of Venezuela at New York, who will be opportunely named or appointed in the course of the month of December, 1897, said Turini binding himself also to engrave on the pedestal the inscriptions the Government of Venezuela may suggest to him.

Seventh. Giovanni Turini is under obligation to place for his account in New York, and at the spot that will be designated, the statue of El Libertador.

Eighth. In the price of \$43,000 the freight from New York to Caracas is not included, nor the expenses for the erection of the monuments to Paez and La Libertad.

Ninth. At the time of the shipment of the two monuments at New York, the Venezuelan consul at that city will have to certify that the same have been properly executed and to be in good condition and well packed.

A duplicate copy of this agreement, both of the same tenor, has been drawn at Caracas, the 28th day of July, 1896, signed G. Turini, per J. Boccardo & Co. H. Perez B.

And whereas Giovanni Turini died on the 27th of August, 1899, and his widow, Margaret Turini, who was legally instituted administratrix of his inheritance, brought a claim against the United States of Venezuela, based on the contract as cited here above, in which claim the Gorham Manufacturing Company and Joseph Carabelli, holding rights as citizens of the United States of America, appear as intervenors, there must be considered whatever claims may arise out of the above-mentioned agreement on behalf of the heirs of Giovanni Turini.

And whereas it appears from the evidence brought before the Commission that the Government of Venezuela did not fulfill the conditions of article 1 of the agreement, failing to make the stipulated monthly payments.

And whereas the same evidence shows that Giovanni Turini did not fulfill the conditions of article 4 of the agreement, not having ready for shipment at the port of New York on the 2d day of February, 1897, the statue of Paez with pedestal, which failure can not in equity be said to be excused by the failure of the Venezuelan Government to meet the monthly payments at the time indicated, as this latter fact did not prevent Turini from entering into a contract with the Gorham Manufacturing Company for the casting in bronze of the said statue, while even in May, 1897, it did not prevent him from agreeing with Carabelli about the making of the pedestal that should have been ready before February 2 of that year.

And whereas the evidence clearly shows that neither of the two parties had the intention to make this mutual failure a resolutory cause, but each requiring to obtain the object of the agreement—Venezuela the statues according to contract and Turini the payment—both, to meet the changed circumstances, almost up to the date of Turini's death, interchanged propositions for a solution of the difficulties that arose out of the nonfulfillment of some conditions of the existing contract.

Whereas it is hereby clearly shown that the original contract was not regarded by them legally dissolved (annuled) the death of Turini should in equity be regarded by parties as the resolutive cause, and therefore the administratrix and heirs at law are entitled to be paid in proportion to the price agreed for the work done, and the value and materials employed and expenses incurred thereon, providing the work done and materials employed are of some use to the other party; and whereas it is proved that the statue of Paez with its pedestal (for which the sculptor fixed \$20,000, this seeming a fair estimate when considering the price established for the three statutes in regard to the conditions announced in the decrees of their erection) had been ready for delivery many months before November, 1898; that Turini had completed the models of the statues of Liberty and Bolivar and that the pedestal of the statue of Liberty was also completed; that the expense incurred for plaster and labor in modeling the two statues of Liberty and Bolivar amounted to the sum of \$1,250 and that the sum of \$3,500 may be regarded as a just compensation for the personal work of the sculptor on both models.

And whereas the pedestal of Liberty without its statue can not be said to be of any use to the Government of Venezuela, because a pedestal has to be regarded as being in harmony with the figure placed on it, and from an artistic point of view, forming with the statue one whole monument; and whereas the statue of Paez with its pedestal as well as the models of the statues of Liberty and Bolivar certainly can be of some use to the Government quite apart from the very varying and very personal opinions on their artistic value.

Whereas, therefore, the United States of Venezuela are indebted to the heirs of Turini for the statue of Paez and pedestal, \$20,000; for making the models of the statutes of Liberty and Bolivar (which models become the property of Venezuela), \$3,500; for material and labor in modeling these statues, \$1,250, making together the sum of \$24,750.

Whereas, however, Turini during his lifetime already received for his work from the Government of Venezuela the amount of \$8,130, the Venezuela Government owes the inheritance of Turini the sum of \$16,620 with interest at 3 per cent per annum from the 1st of January, 1898, the date on which, according to the agreement, the money was due, until the 31st of December, 1903, the anticipated date of the final award by this Commission, making together the sum of \$19,611.60, which sum is therefore allowed to the administratrix and heirs-at law of Giovanni Turini, deceased.

And whereas, further, at the time of Turini's death the estate was and still is liable for the following debts, which were incurred by him in carrying out his agreement as to the statue of Paez, viz:

(1) To the Gorham Manufacturing Company the sum of \$6,319, with interest thereon at 6 per cent per annum from July 1, 1897.

(2) To Joseph Carabelli the sum of \$3,095, with interest thereon at 6 per cent per annum from October 22, 1898.

The above-named parties, intervenors in this claim, should be protected to the extent of their proportionate interest in the distribution of the award herein made to the estate of Giovanni Turini, deceased.

The United States and Venezuela Claims Commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of Margaret Turini, administratrix of the estate of Giovanni Turini, deceased, claimant against the Republic of Venezuela, No. 16, the sum of nineteen thousand six hundred eleven and 60/100 dollars in United States gold coin is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

HARRY BARGE, *Umpire*.

Attest:

J. PADRON UZTÁRIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
*Secretary on the part of the
United States of America.*

Delivered August 21, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of Margaret Turini, as administratrix of Giovanni Turini, claimant,	} No. 17.
v. THE REPUBLIC OF VENEZUELA.	

BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of Margaret Turini, as administratrix of Giovanni Turini, to recover the amount due her as such administratrix under a contract made by the Government of Venezuela, with a partnership of which the deceased was a member. The petitioner is and her deceased husband was a citizen of the United States. The claim arises under the following circumstances: On the 6th day of November, 1896, the Government of Venezuela, by its proper official, entered into a contract with G. Turini & Co., which contract was duly published in the Official Gazette of November 7, 1896, a copy of which is presented with the memorial. This contract called for the construction of certain public works in or near Caracas at an agreed compensation. Subsequently, on December

21, 1898, such contract was rescinded by an agreement between the said firm and the Government, the latter, the Government of Venezuela, agreeing to pay said partnership the sum of 22,564.60 bolivares in installments in full payment and satisfaction of the work which had been done under the contract.

The partnership consisted of Giovanni Turini and General Paul—who had an equal share therein—and one Heridia, who had a limited interest in the profits only. The memorial alleges that the amount due under this agreement of settlement has not all been paid, and the claim is for a recovery of the interest of the deceased in the amount unpaid upon this agreement of settlement.

The only possible question that there can be in this case is as to the amount which is still due on the contract of December 21, 1898, settling and agreeing to pay an agreed compensation for work done under the previous contract.

There can be no question as to the claimant's right to recover the share of the deceased, intestate, in whatever amount is still due from the Government of Venezuela on this contract.

The Government of Venezuela should in this case be compelled to disclose the amounts which have been paid to the other members of this partnership on account of this agreed amount; and an award should be made in favor of the claimant for her share as administratrix in any unpaid amount.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

Margaret Turini. Claim No. 17.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, the agent of the United States of Venezuela, has studied the claim presented by Margaret Turini in her capacity of heir ab intestato of Giovanni Turini, arising out of a contract entered into in the year 1896 between her predecessor in interest and the minister of public works; and he respectfully shows to the tribunal:

In the present case the facts set forth in the brief of the honorable agent of the Government of the United States are from every standpoint true, and the right of the claimant appears to be proved from the documents which the undersigned produces, marked A, B, and C.

Therefore the Government of Venezuela acknowledges the obligation which results to pay to the claimant the sum of 5,250 bolivars, which belong to Giovanni Turini by virtue of the contract entered into between him and the minister of public works on the 21st of December, 1898, and in accordance with the contract which the said Turini had with Messrs. Paul and Heredia, a copy of which has been presented.

CARACAS, July 8, 1903.

(Signed) F. ARROYO PAREJO.

TRANSLATOR'S NOTE.—As this claim was admitted by the Government of Venezuela there has been no translation of the accompanying documents made.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Margaret Turini, as administratrix of Giovanni Turini, claimant,	} No. 17.
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ADDITIONAL STATEMENT OF FACTS ON BEHALF OF THE UNITED STATES.

Since the submission of the memorial and documents of this case to this honorable Commission the agent of the United States has had submitted to him the documents, hereto attached, consisting of the translation of a contract entered into between Mr. Giovanni Turini and José de Jesús Paúl and a statement as to the amount due from the Venezuelan Government.

As will be seen from the contract Mr. Turini was to have received one-half of the profits of the enterprise. The work was stopped and a settlement had with the Government of Venezuela, which resulted in the issuance of an order on the Bank of Venezuela for the payment of Bs. 22,564.60, payable in monthly installments of Bs. 1,500 each. Twelve thousand bolivars, or eight monthly installments were duly paid on this order, and Mr. Turini received his share of the amount.

In the statement submitted it will be seen that payments ceased in the month of August, 1899, and that no further payment has been made on account down to the 18th of June of the present year. The account submitted by the partner of Mr. Turini shows a sum due to one Atalmalpa Heredia of 64.60 bolivars. The account therefore may be stated as follows:

	Bolivars.
Amount of original order	22,564. 60
Received on account.....	12,000. 00
Balance due Turini & Co.....	10,564. 60
Due Atalmalpa Heredia	64. 60
Remainder	10,500. 00

Of this 10,500 bolivars the administratrix of Mr. Turini is entitled to receive 5,250 bolivars.

The Government of the United States therefore asks that an award be made in favor of the claimant for 5,250 bolivars, with interest at the legal rate of 3 per cent from the date of the last payment.

Respectfully submitted,

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Margaret Turini, as administratrix of Giovanni Turini, claimant,	} No. 17.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

COMMISSION:

As it appears from the documents submitted to the Commission by the honorable agents of the respective Governments that the evidence is in accord with the facts in the case, the claim is allowed in full, with interest from August 31, 1899.

The facts in the case are, briefly, as follows:

On the 6th day of November, 1896, the Venezuelan Government executed a contract with G. Turini & Co., a partnership consisting of Giovanni Turini and Gen. J. de J. Paúl, for the construction of certain public works in the city of Caracas, and subsequently this contract was rescinded by mutual agreement, and the said Government of Venezuela agreed to pay said partnership the sum of 22,564.60 bolivars, in installments, in full payment and satisfaction of the work which had been done under the contract.

Under the terms of the agreement of partnership entered into by Turini & Paúl, Turini was to receive one-half of the profits of the enterprise.

In execution of the obligation incurred by the Government of Venezuela, an order was issued in favor of Gen. J. de J. Paúl, as attorney for Turini, on the Bank of Venezuela, for the payment of 22,564.60 bolivars, payable in monthly instalments of 1,500 bolivars each. Twelve thousand bolivars, or eight monthly instalments, were paid on this order by the bank, and Mr. Turini, during his lifetime, received his share of this amount. The payments ceased in the month of August, 1899, and no further payment has been made down to the 3d of July of the present year, as is proven by the statement of the president of the Bank of Venezuela, submitted to the Commission by the honorable agent of the Venezuelan Government.

The honorable agent of the United States admits in his additional statement of facts, filed the 7th of July, 1903, that the account submitted by the partner of Turini shows a sum due to one Atalmalpa Heredia, of 64.60 bolivars; the account may therefore be stated as follows:

	Bolivars.
Amount of the original order on the Bank of Venezuela	22,564.60
Received on account from the bank	12,000.00
Balance due Turini & Co	10,564.60
Due Atalmalpa Heredia.....	64.60
Remainder	10,500.00

Of this sum of 10,500 bolivars the administratrix of Giovanni Turini is entitled to receive one-half.

In consequence, the Commission makes an award in favor of Margaret Turini, as administratrix of Giovanni Turini, in the sum of 5,250 bolivars, with interest at the legal rate of 3 per cent per annum

from the date corresponding to the last payment, August 31, 1899, to the 31st of December, 1903, the anticipated date of the final award by this Commission, making in all the sum of 5,932.50 bolivars, which, at the rate of exchange agreed upon, makes the sum of \$1,140.86 United States gold.

The United States and Venezuela Claims Commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of Margaret Turini, as administratrix of Giovanni Turini, claimant, against the Republic of Venezuela, No. 17, the sum of one thousand one hundred and forty and 86/100 dollars (\$1,140.86) in United States gold coin is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTÁRIZ,
Secretary on the Part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered August 7, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES ON BEHALF OF HENRY R. Kuhnhardt, George W. Kulhke, and Franz Mueller, partners as Kuhnhardt & Co., claimants,	} No. 18.
v.	
THE REPUBLIC OF VENEZUELA.	

BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claims of Kuhnhardt & Co., one for damages in the sum of \$46,875, arising from the attempted cancellation of the Encontrados contract and concession; the other for damages to the estate of El Molino, in the amount of \$19,211.94.

The claimants Kuhnhardt and Kulhke are native-born citizens of the United States, and the claimant Mueller is a duly naturalized citizen of the United States.

FIRST CLAIM.

I.

STATEMENT OF FACTS.

The claim presented in the first memorial arises from a contract made on the 24th of February, 1897, between the minister of public works of the United States of Venezuela, under due authority from his Government, and one Joaquin V. Urquineona, granting a concession for the erection and maintenance of a wharf, and the right to collect tolls at the port of Encontrados. Said contract, by due assignment, became the property of a company known as the *Compania Anonima Transportes en Encontrados*, with a capital of 300,000 bolivars, divided into 400 shares of 750 bolivars each, of which 400 shares the claimants are the owners of 325. The erection of the wharf and other work required by the contract was duly performed, and in 1898, after examination by proper government officials, the work was approved and properly certified to, and accepted on behalf of the Government, and the performance of the contract was recognized.

Notwithstanding this fact, on November 15, 1900, the National Executive of the Republic adopted, without notice to the claimants or to the company, a resolution canceling this concession, whereupon the Government of Venezuela took possession of said wharves and has since retained possession thereof and collected all the tolls.

II.

The Government of Venezuela is liable to respond in damages for the value of the property taken.

There can be no question that the decree of November 15, 1900, did not confer upon the Venezuelan Government any right to take possession of this wharfage property and destroy the rights of the company. Not only had full performance of the contract been previously properly certified to and approved, but such decree without notice to the persons whose property was about to be taken nor an opportunity on their part to appear and defend, is absolutely nugatory and of no binding force or effect whatsoever. The necessity of notice, in order to give any decree or judgment any validity whatsoever, is a basic principle of law and natural right, too well established to need discussion. The right of recovery in such a case has, moreover, been expressly recognized. See, among others, the Cheek claim, reported in the second volume of Moore's *International Arbitrations*, pages 1899 et seq., in which case the right to recover damages arising from such unwarranted rescission of a Government contract was considered and the claimant's right to recover sustained. (See note on page 1908.)

The liability of the Government of Venezuela for damages in a case such as this is, moreover, expressly sustained by the recent opinion of Sir Henry Strong and Don M. Dickinson, in the matter of "*El Triunfo Company, Limited*," upon an arbitration between the Republics of the United States of America and Salvador, in which case the general rule of international law was laid down to be that, where a government is itself a party to a contract, it can not itself annul that contract, but

must have recourse to due process of judicial proceedings involving notice, opportunity to be heard, consideration, and judgment, and must either invoke or secure the remedy sought; and that if, without taking such proceedings, it arbitrarily and without a hearing arrogates the right to condemn the other party to the contract and forfeit his rights under it, it becomes liable in damages for all injuries sustained by such other party.

III.

The claimants have a right to present the claim as stockholders of the company.

The company in this case in January, 1901, filed a protest with the Venezuelan Government, but no attention seems to have been paid to it. The claim of the claimants is based upon the fact that by taking away all the property of the corporation, the Venezuelan Government absolutely destroyed the value of the stock held by the claimants, giving the claimants, therefore, as citizens of the United States, a direct claim against the Government of Venezuela. Their claim is not a claim against the corporation, although they are stockholders in that corporation, for, by the act of the Venezuelan Government, that corporation has been deprived of the power to liquidate its obligations to the stockholders. The language of the protocol in this case includes the right to present to this commission all claims of citizens of the United States, and this should certainly include the claim of the stockholders in this case, for by no other course than by a direct claim against the Venezuelan Government that produced the injury can they have any relief.

This right of American stockholders in a foreign corporation to present their claims against a government which has destroyed the property of such corporation is, moreover, expressly recognized by the opinion of Sir Henry Strong and Don M. Dickinson in the *El Triunfo* case above referred to.

IV.

An award should be made for the full amount of the first claim.

The destruction of the property having been occasioned by the illegal acts of the Venezuelan Government itself, the right to relief is clear, and the property having been absolutely destroyed, that relief should be for the full value of the stock.

SECOND CLAIM.

I.

STATEMENT OF FACTS.

The second claim is based upon the facts that the claimants owned certain real estate in the State of Lara, in the Republic of Venezuela, used for raising sugar cane and manufacturing sugar and in raising corn fodder and cattle; that, in December, 1899, certain troops of General Castro, who was at the time and still is the President of Venezuela, under the immediate command of General Lara, took possession of claimant's estate and seized for rations the cattle and crops and

destroyed other property. An appraisement of the value of the property taken by the Venezuelan troops in this way was duly made, under judicial supervision, at the sum of \$15,750. Furthermore, since that time it has been impossible for claimants to occupy said estate or work the same on account of the state of civil disturbance which the Government of Venezuela has wholly failed to suppress, causing a damage to them in the sum of \$3,054.33.

And there has been a further damage to said estate stated in a supplemental memorial of the claimant, during the years 1902 and 1903, amounting to \$1,407.61, arising from the same state of facts as above mentioned.

II.

The acts complained of are clearly supported by the evidence, and are acts for which the Government of Venezuela is responsible.

The evidence as to the property taken by the Government troops, its value, and the subsequent impossibility of working this estate, is clear and apparently beyond contradiction. The acts complained of were done by the Government troops, under the direct authority and under the supervision of their officers. There can be no question as to the liability of the Government in such case. (See the rule of international law in this respect laid down in Moore's International Arbitrations, vol. 3, pp. 2952 and 2953, and the cases collected in vol. 4, pp. 3714 et seq.)

The property taken in this case was taken for the use and support of the Government troops, and under the authorities there can be no question as to the liability of the Government to render compensation for the value of the property so taken. The same is true as to so much of the property as may be said to have been destroyed and not taken. (See the rule laid down in Shrigley's case, 4th Moore's International Arbitrations, pp. 3711 and 3712.)

The claim for loss arising from inability to work the property is also clearly a claim for which the Venezuelan Government is responsible. It was its duty to suppress internal disorders and maintain such a state of peace that citizens, as well as foreigners, could peacefully use and possess their property. There was not, during this period, any state of war; simply local disturbances which the Venezuelan Government had ample power to suppress, and it is liable for this failure to do so.

III.

An award should be made for the full amount of this second claim.

The loss complained of being the result of acts for which the Venezuelan Government is clearly responsible, the amount of the damage being clearly established by the evidence, an award should be made for the full amount.

We submit, therefore, that in this case an award should be made against the Government of Venezuela for the full amounts set forth in the memorials.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

ANSWER.

Claim of Kunhardt & Co., No. 18.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied the papers submitted in the claim presented by Messrs. Kunhardt & Co., and respectfully states to the tribunal:

Messrs. Kunhardt & Co. claim \$46,875 on account of the value of shares of stock in the Corporation of *Trasportes de Encontrados*, of which they say they are the holders, and \$19,211.94 on account of damages caused by the troops of the revolution which Gen. Cipriano Castro commanded in the year 1899 upon a plantation called "El Molino," which was the property of the claimants.

The first of the claims enumerated is unfounded in every aspect. As appears from the documents produced by the claimants themselves, the Corporation *Trasportes de Encontrados* was organized in April, 1899, by Bernardo Tinedo Velasco, Rafael Tinedo, Carlos Rodriguez, Emilio MacGregor, José Vte. Matos, Joaquin Valbuena U., Amilcar Valbuena, Manuel Garbiras, and Joaquin Osorio Negrón, all citizens of Maracaibo. It does not appear that the claimants were in any manner interested in its organization and constitution; if later on they became the owners of various shares of stock issued to bearer by said company it was a voluntary act on their part.

If on account of the ministerial resolution, which in November, 1900, declared the concession which the aforesaid company exploited annulled, any claim could arise against Venezuela, it is clear that only the managers of it, or its receivers in case of its dissolution, should institute a suit for its recovery. To argue in a contrary sense would be to encourage a vicious speculation. In effect the claimants, taking advantage of their status as foreigners, would be able to recover moneys to the injury of the other stockholders of the company, who were not in the same category.

The date when they acquired the stock is not proven, nor is it proven that they were ignorant of the social conditions; it is, therefore, presumable, at least, that they wished to take advantage of their position as foreigners in order to institute extraordinary measures which were not available to their Venezuelan associates.

Before a tribunal of equity, such as this is, these considerations ought to prevail.

SECOND CLAIM.

The foundation of this second claim is sought to be proven by means of depositions which are to be found amongst the papers. It ought to be noticed that the witnesses do not affirm the existence upon the ranch "El Molino" of all of the animals which are said to have been carried off by the troops and that no mention of them is made in the deeds of sale by De Garmendia to the claimants. There is no doubt but that the latter suffered some injuries to their property but such damages were necessary incidents of the operations of war and can not therefore establish the responsibility of the Government of Venezuela according to the principles of international law.

The tribunal will observe besides, that the witness Pablo Anzola Casorla, formerly manager of the property of Garmendia, and in whose name the deed of sale for the property "El Molino" was executed to the claimants, made a reservation with respect to the damages suffered and the animals carried off. Notice should be taken of this reservation, since this witness was capable of forming a very exact estimate.

Neither has the extent of the damages, which the claimants allege that they suffered been proved either, since no judgment of experts has been taken.

For all the reasons set forth, both claims ought to be disallowed.
Caracas, July 9, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

<p>THE UNITED STATES OF AMERICA ON BEHALF of Henry R. Kuhnhard, George W. Kulke, and Franz Mueller, partners as Kuhnhardt & Co., claimants,</p> <p style="text-align: center;">v.</p> <p>THE REPUBLIC OF VENEZUELA.</p>	}	No. 18.
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REPLICATION ON BEHALF OF THE UNITED STATES.

I.

The answer of Venezuela to the claim of Messrs. Kunhardt & Co., arising out of an annulment of a concession on the part of the Government of Venezuela for the Compañía de Transportes en Encontrados, insists on two points: First, that the claimants have not a right, as stockholders of this corporation, to maintain an action and that a suit can alone be brought on behalf of the managers of the company; and, second, that there is no date given when the shares of stock were acquired by Messrs. Kunhardt & Co., and that it is therefore presumable that they bought said stock as a speculation with a view to enforce a claim against the Government of Venezuela on account of the damages sustained.

(a) The United States Government considers that the position assumed by Venezuela that the stockholders are incapable of maintaining an action for the recovery of damages on account of the annulment of the concession before mentioned is not well taken. In this respect we call the attention of the honorable Commission to the decision rendered in the matter of the arbitration between the Republics of the United States and Salvador with respect to "El Triunfo Company, Limited," already cited in the brief submitted on behalf of the United States in this matter, and to the well-known Delagoa Bay Railway case to be found in the Moore's International Arbitration at page 1865, et seq.

The status of these claimants is the same as that of the "El Triunfo Company, Limited," in which an award was rendered in favor of the claimant.

(b) As to the second point made by the agent of Venezuela that—

the date when they acquired the stock is not proven, nor is it proven that they were ignorant of the social conditions; it is therefore presumable, at least, that they wished to take advantage of their position as foreigners in order to institute extraordinary measures which were not available to their Venezuelan associates—

we present herewith an affidavit signed by H. P. de Vries, the attorney in fact, for Kunhardt & Co., to the effect that the date of acquiring the shares of stock in the *Compañía Anónima de Transportes en Encontrados* was at least four months prior to the injury sustained by said company. We submit that there can be no presumption here that the claimants could have foreseen the arbitrary act on the part of the Venezuelan Government in annulling the concession granted to this company. The evidence in this case is full and conclusive and an award should be made for the amount claimed.

II.

With respect to the second claim of Kunhardt & Co., arising out of damages done to the ranch "El Molino," the Venezuelan agent in his answer states:

It should be noticed that the witnesses do not affirm the existence upon the ranch "El Molino" of all of the animals which are said to have been carried off by the troops and that no mention of them is made in the deeds of sale by De Garmendia to the claimants.

(a) In this connection we beg to refer the Commission to the discussion of the evidence set forth in the brief of the attorneys of the claimants already on file with the Commission. It will be seen from a perusal of the passages of this brief in relation to the evidence that the contention of the Government of Venezuela is wholly unfounded.

(b) The contention of Venezuela that the acts committed on the ranch "El Molino" were acts necessarily incident to operations of war can not be sustained. The troops supplied themselves with cattle taken from claimant's ranch, and camped thereon, doing other damage to the machinery and dwelling house. Acts of this sort do not come within the category of necessary incidents to warfare. The Government of Venezuela took the claimants' property and is responsible to pay a reasonable sum therefor. The value of the property taken and injured has already been testified to by competent witnesses. (See brief above cited.) The troops of the Government of Venezuela took possession of the ranch of the claimants and are responsible to the claimants for its return in as good condition as they received it, with a proper compensation for its use, or to pay the damages caused during their occupation.

We submit that the evidence in this case is full, and amply sustains the allegations set forth in the memorial, and that an award should be made as prayed.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela,

THE UNITED STATES OF AMERICA ON BEHALF OF Henry R. Kunhardt, George W. Kulhke, and Franz Mueller, partners as Kunhardt & Co., claimants,	} No. 18.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

DECISION AND AWARD.

Opinion by Bainbridge, Commissioner.

The Commission awards to the claimants the sum of thirteen thousand nine hundred and forty-seven dollars (\$13,947) United States gold.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of Henry R. Kunhardt, George W. Kulhke, and Franz Mueller, partners as Kunhardt & Co., claimants,	} No. 18.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

BAINBRIDGE, *Commissioner*:

Kunhardt & Co., claimants herein, are a copartnership doing business in the city of New York and composed of Henry R. Kunhardt, George W. Kulhke, and Franz Mueller. Kunhardt and Kulhke are native citizens of the United States. Mueller was born in Germany in 1859, but was duly naturalized as a citizen of the United States on June 12, 1896, in the district court of the United States for the southern district of New York.

On behalf of Messrs. Kunhardt & Co., the United States presents two separate and distinct claims.

I.

COMPAÑÍA ANÓNIMA TRASPORTES EN ENCONTRADOS.

The memorial states that on the 24th of February, 1897, a contract was entered into by and between the minister of public works of Venezuela, J. M. Ortega Martinez, and Gen. Joaquin Valbuena U., for the construction of a wooden wharf and other works of public utility in the port of Encontrados, on the Zulia River, in the State of Zulia, Venezuela. By the said contract and in consideration of the building and maintaining of the wharf and other structures by Valbuena, the Government of Venezuela granted to Valbuena, his heirs and successors, the exclusive right for fifteen years to collect tolls from the ships or boats for loading and unloading at said port a duty not to exceed 75 centimos for every hundred kilograms gross weight of merchandise. The grantee, his heirs or successors, were given the right of ownership over the wharf and its belongings during said term of fifteen years,

upon the expiration whereof the wharf and all other works were to become the property of the nation.

The contract by its terms could be transferred to another person or company, national or foreign, with the approval of the Government of Venezuela.

This contract was ratified by the Congress and the National Executive on April 2, 1897, and published in the "Gaceta Oficial."

On December 15, 1897, Valbuena, with the consent of the President of the Republic, assigned all his rights under the contract to Federico Evaristo Schemel, who, on December 16, 1897, with the consent of the President of the Republic, assigned all his rights under the contract to Bernardo Tinedo Velasco.

Tinedo completed the wharf and other structures in accordance with the terms of the contract. On May 10, 1898, the department of public works appointed Victor Brigé, an engineer, to examine the work, and on July 14, 1898, Brigé reported to the Government that the wharf and other structures conformed to all the requirements of the contract, whereupon said work was accepted on behalf of the Government.

On March 14, 1899, with the approval of the National Executive in the council of ministers, the department of public works authorized Tinedo to assign all his rights under said contract to the company known as "Compañía Anónima Transportes en Encontrados." This company was formed in Maracaibo on April 10, 1899, by an agreement entered into by Bernardo Tinedo V., Rafael Tinedo, Carlos Rodríguez, and other citizens of Maracaibo, for the purpose of assuming the rights and liabilities of the Valbuena contract. By its articles of agreement it was provided that said company should remain in existence until the expiration of the fifteen years, during which the right to collect the tolls was granted to Valbuena and his successors. The capital of the company was 300,000 bolivars, divided into four hundred shares of 750 bolívares each. Said shares were issued for full value to the members of said company.

On April 18, 1899, pursuant to the authorization given him by the department of public works, Tinedo, in consideration of the sum of 300,000 bolivars, conveyed to the "Compañía Anónima Transportes en Encontrados" the wharf and other structures, together with all the rights and privileges under the contract and said company assumed all the duties and liabilities imposed by said contract. This conveyance was registered in the office of the register of Maracaibo on April 22, 1899.

On or about July 1, 1899, Messrs. Kunhardt & Co. became the owners of an interest in the "Compañía Anónima Transportes en Encontrados" amounting to 243,750 bolivars, represented by 325 certificates of stock, each certificate representing one share of a par value of 750 bolivars.

On November 15, 1900, the National Executive of the Republic, through the department of public works, adopted the following resolution:

It is resolved:

As the agreement entered into on the 24th of February, 1897, between the department and the citizen Joaquin Valbuena Urquinaona, for the construction of a wharf in the port of Encontrados, has not been fulfilled in all its parts, the supreme Chief of the Republic has declared said contract void.

Let it be known and published.

For the National Executive.

J. OTAÑEZ M.

This resolution was published in the "Gaceta Oficial" November 16, 1900.

The memorialists allege that this resolution, whereby the Valbuena contract and concession were annulled, was without legal or other cause or justification, and wrongfully deprived the stockholders of the company, and in particular Kunhardt & Co., as owners of over three-fourths of said stock, of the property to which they were legally entitled and in which they had invested funds to the amount of 243,750 bolivars upon the faith of the promise of the Government of Venezuela as set forth in said contract and concession; that since November 15, 1900, the Venezuelan Government has prevented said company from collecting the toll to which it was and is justly entitled under the terms of the said contract and has thereby rendered worthless the wharf and other structures erected at Encontrados, and the contract and concession under which the same were built, all in contravention of the terms of said contract; that on January 19, 1901, the shareholders of said company, including Kunhardt & Co., protested against the action of the Executive in said attempted cancellation of the contract and in the subsequent proceedings in pursuance of said cancellation, but that the Venezuelan Government has continued to prevent the collection of the tolls and has refused to allow said company to exercise its rights under the contract.

Kunhardt & Co. claim that by reason of said wrongful action of the Government of Venezuela, that they have been damaged in the sum of 243,750 bolivars, equivalent to \$46,875 in United States gold, being the value of their stock in the "Compañía Anónima Transportes en Encontrados" prior to November 15, 1900, and they claim indemnity in that amount.

The learned counsel for Venezuela in his answer declares that this claim is unfounded in every respect; that the corporation "Transportes en Encontrados" was organized solely by citizens of Venezuela; that claimants' were not in any manner interested in its organization, and that if they became the owners of various shares of stock issued by said company, it was a voluntary act on their part; that if any claim could arise against the Government of Venezuela on account of the annulment of the contract of February 24, 1897, only the managers of the company, or the receiver in case of dissolution, could institute the suit; that the claimants, taking advantage of their status as foreigners by making this claim, are using an extraordinary remedy not available to the other shareholders of the company.

Article 163 of the Código de Comercio of Venezuela recognizes three kinds of mercantile companies:

(1) *La compañía en nombre colectivo*, in which all the members administer the business themselves or by means of an agent chosen by common accord. The liability of each member is unlimited. It corresponds to a general partnership.

(2) *La compañía en comandita*, in which one or more of the members are bound only to the amount of their investment. There are two kinds of companies en comandita; (a) simple and (b) divided into shares. It is similar to what is known in England and the United States as a limited partnership.

(3) *La compañía anónima*, in which the capital is managed by shareholders, who are responsible only to the value of their shares. It is the legal entity known to the common law as a private corporation.

Any number of persons not less than seven may by agreement associate themselves into a "Compañía Anónima." No previous authorization is necessary. It is a corporation created under general charter. The law requires that the articles of agreement (*contrato de sociedad*), in writing, whatever the number of the shareholders, must be made in duplicate, one copy of which is to be filed in the office of the register and the other in the records of the company. (Art. 195.)

The powers, capacities, and incapacities of a corporation under the civil law are similar to those under the English and American corporation law.

The "Compañía Anónima Transportes en Encontrados" was organized April 10, 1899, by nine citizens of Maracaibo, and its articles of agreement filed in the registry as provided by law on April 13, 1899.

The articles of agreement declare the objects and purpose of the corporation to be the acquisition of the rights and privileges granted by and the assumption of the obligations of the contract executed between the National Government and Gen. Joaquin Valbuena on February 24, 1897. The capital of the company is fixed by said articles at 300,000 bolivars. On April 18, 1899, Bernardo Tinedo Velasco, the then owner of the concession, pursuant to the authorization of the Government, duly transferred to the company all the rights and privileges which had been acquired by him as concessionaire under said contract. The consideration of the transfer is declared to be 300,000 bolivars.

H. R. Kunhardt states in an affidavit dated May 20, 1903, that as a partner of the firm of Kunhardt & Co. he purchased, on or about July 1, 1899, 325 certificates of the stock of said compañía of the par value of 750 bolivars each, amounting to 243,750 bolivars, or \$46,875 American money; that the reasonable value of said 325 certificates on November 15, 1900, was \$46,875, and that during the year, from September 12, 1899, to September 20, 1900, the company declared and paid dividends on said stock amounting to over 10 per cent on the par value of each share of stock.

The capital of the "Compañía Anónima Transportes en Encontrados" was represented by the alleged value of the contract and concession of February 24, 1897. It is claimed that the Executive action of November 15, 1900, annulling the contract renders worthless the wharf and other structures erected at Encontrados and the contract and concession under which the same were built. In other words, it took away the company's capital. Paragraph 2 of article 204 of the *Código de Comercio*, provides that when the capital of a company has been diminished two-thirds, the company is necessarily put in liquidation, if the shareholders do not prefer to refund the same or limit the capital to the existing balance, provided the latter is sufficient to obtain the objects of the company. Article 42 of the *reglamento* of the company provided that when any of the cases expressed in paragraph 2 of article 204 of the *Código de Comercio* should exist the company could be dissolved.

When the capital of the corporation was practically destroyed by the taking away of that which represented it, the company was dissolved by operation of law and the by-laws above cited.

While the property of a corporation in *esse* belongs not to the stockholders individually or collectively, but to the corporation itself,

it is a principle of law universally recognized that, upon dissolution, the interests of the several stockholders become equitable rights to proportionate shares of the corporate property after the payment of the debts. The rights of the creditors and shareholders to the real and personal property of the corporation, as well as to its rights of contract and choses in action, are not destroyed by dissolution or liquidation. But in such case the creditors of the corporation have a right of priority of payment in preference to the stockholders.

The principal asset of the "Compañía Anónima Trasportes en Encontrados" was the Valbuena concession. Under it the Government of Venezuela, for a consideration, agreed to give the grantee, his heirs, or successors, the rights and privileges therein designated for a period of fifteen years. It is fundamental that if one party to a contract wrongfully violates it he becomes liable to the other for such damages as the latter may sustain by reason of the breach, and this is true "whether such party be a private individual, a monarch, or a government of any kind."

Article 691 of the civil code of Venezuela recognizes and declares that a property right may rest in contract. If the rights granted under the contract of February 24, 1897, were wrongfully taken away by the Government of Venezuela, compensation is justly due from that Government, first, to the Compañía Anónima Trasportes en Encontrados, or, second, upon the dissolution of said company, to its creditors and shareholders.

Messrs. Kunhardt & Co., as citizens of the United States and the equitable owners of their proportionate share in the property of the dissolved corporation, have a standing before this Commission to make claim for indemnity for such losses as they may prove they have sustained by reason of the wrongful annulment of the concession.

The claim of Kunhardt & Co. is based upon the alleged value of the concession when canceled as being 300,000 bolivars, and it is urged on their behalf that they have been damaged to the reasonable value of their interest in the company as measured by their ownership of 325 shares of the capital stock of a par value of 750 bolivars each, or the total value of 243,750 bolivars, equivalent to \$46,875 in United States gold.

But the real interest of Kunhardt & Co. is an equitable right to their proportionate share of the corporate property after the creditors of the corporation have been paid. An important and, indeed, an essential element of proof to determine the actual measure of the claimants' loss is entirely wanting here. No evidence of the amount of the corporate debts is presented, although the existence of corporate indebtedness is apparent. The protest of January 19, 1901, states that—

The prejudices are very grave which the company, its stockholders and many others who have interest in it, suffer from the Executive resolution which declared the contract base of this company "canceled." And said protest is made on behalf of the company, its stockholders, and others connected with it.

Who but creditors of the corporation can be parties in interest to this contract other than the company and its stockholders?

The value of the corporate shares and the extent of a shareholder's interest in the corporate property are absolutely dependent upon the relation which the assets of the corporation bear to its liabilities.

The absence of such a showing in this case renders impossible the determination of Kunhardt & Co.'s interest in the concession or the

amount of loss they have sustained by its annulment. The claim must, therefore, be here disallowed, but without prejudice to the corporation, its creditors and stockholders, or to the interests of these claimants therein.

EL MOLINO.

The memorial states that:

(a) The firm of Kunhardt & Co. are and since September 12, 1897, have been the owners of an estate known as "El Molino," situated in the district of Barquisimeto, State of Lara, Venezuela. Said firm invested in the purchase and improvement of this property the sum of \$35,000. The estate was used for the raising of sugar cane and the manufacture of sugar, the raising of corn and fodder, and for pasturing milch cattle and oxen. Since June 5, 1899, the estate has been in charge of J. Adolphus Ermin, as administrator and agent of claimants, and from said date to December 22, 1899, the firm received from the estate a monthly income exceeding 400 bolivars.

On the night of December 23, 1899, certain troops of the army of General Castro, under the immediate command of General Lara, entered upon and took forcible possession of said estate and encamped thereon for some time. During this period the troops seized for rations the cattle upon the estate and foraged their horses upon the growing crops, destroying all the corn and sugar cane growing upon the estate; took for their own use the horses, donkeys, and mules, which were on the estate, and upon the departure of the troops they had killed or taken away all the live stock and destroyed all the growing crops, had injured and destroyed the wire fencing and greatly damaged the sugar house and sugar machinery.

As a direct result of the occupation of the estate by the troops of General Lara, the firm of Kunhardt & Co. sustained damages to the extent of 81,900 bolivars, equivalent to the sum of \$15,750 in United States gold. An appraisal of the property lost and an assessment of the damages done, were made by competent appraisers familiar with the property and its value. The report of said appraisers shows the loss sustained by claimants to be as follows:

	Bolivars.
85 selected milch cattle, several of them American, an average of 240 bolivars each.....	20, 400
3 teams of donkeys, with their harness, at 1,200 bolivars per team.....	3, 600
9 mules, at 500 bolivars each.....	4, 500
18 horses, at 500 bolivars each.....	9, 000
Damage to the residence.....	8, 000
3 carts, with their harness, at 400 bolivars each.....	1, 200
Damage to the wire fence.....	2, 000
300 tares of corn fodder, at 24 bolivars each.....	7, 200
250 tares of sugar cane, at 40 bolivars each.....	10, 000
Injury to the engine room and loss of the zinc of the engine house.....	16, 000
	81, 900
Or in United States money.....	\$15, 750

Said appraisement was verified by the appraisers before Señor R. M. Delgado, judge of the municipal court of the city of Concepcion, on April 16, 1901.

(b) The claimants allege that since the occupation of "El Molino" by the troops in December, 1899, as above described, the district in which said estate is situated has been in a condition of civil disturb-

ance, which has prevented them from restocking, replanting, or in any way making use of said estate, which, it is claimed, is highly adapted to agricultural use, and except for the civil disorder which has prevailed would be exceedingly productive; that previous to the occupation of December, 1899, the estate yielded a net annual profit of \$924; that the Government of Venezuela has failed to suppress said condition of civil disturbance by reason whereof claimants have lost the use and occupation of said estate to their damage in the sum of \$3,054.33.

(c) In a supplemental memorial dated May 20, 1903, claimants allege that they have sustained further losses and damages by reason of additional depredations committed by Government troops upon said estate "El Molino," that in order to maintain said estate and reduce as much as possible the damages suffered in respect thereto, the agent of claimants kept on the estate a small number of milch cattle and endeavored to raise hay and corn; that during the first part of the year 1902 the Government troops destroyed all the crops on said estate and seized 5 milch cattle; and that on the 2d day of April, 1903, said troops seized 13 milch cattle from said estate to the additional injury of claimants in the sum of \$1,407.61.

(d) In a supplemental memorial dated June 22, 1903, claimants filed a "justicativo" in proof of loss and damages sustained by them in respect to said estate in addition to that shown in their previous memorials, in the sum of \$2,635.77, gold.

The entire amount claimed for injuries sustained in connection with the hacienda "El Molino" is the sum of \$22,847.71, United States gold.

The responsibility of a government for the appropriation of neutral property in time of war has been clearly stated in Shrigley's case decided by the United States and Chilean Claims Commission of 1892, as follows:

(a) Neutral property taken for the use or service of armies by officers or functionaries thereunto authorized gives a right to the owner of the property to demand compensation from the government exercising such authority.

(b) Neutral property taken or destroyed by soldiers of a belligerent with authorization, or in the presence of their officers or commanders, gives a right to compensation whenever the fact can be proven that said officers or commanders had the means of preventing the outrage and did not make the necessary efforts to prevent it.

The evidence submitted in support of this claim satisfactorily shows that the Government troops under the immediate command of General Lara entered upon and confiscated property of the estate "El Molino" in December, 1899, and at various times thereafter. A reasonable compensation is therefore due to claimants from the Government of Venezuela for the losses thus sustained. But that portion of the claim based upon the loss of the annual profits of the estate by reason of the civil disorder which prevailed in the district does not appear to be well founded. The situation of claimants' property in that regard did not differ from that of other property within the same district, and no government is immune from the occurrence of civil commotions. There is also in the last two memorials an obvious duplication of the claim for the 13 milch cattle taken early in April, 1902. Several

items of the claim appear to be excessive, and the evidence of value is not wholly satisfactory.

The Commissioners have agreed upon an award in favor of Kunhardt & Co. on this branch of their claim in the sum of \$13,947, gold coin of the United States.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

<p>THE UNITED STATES OF AMERICA ON BEHALF of Henry H. Kunhardt, George G. Kulhke, and Franz Mueller, partners as Kunhardt & Co., claimants,</p>	}	No. 18.
v.		
The Republic of Venezuela.		

Doctor PAUL, *Commissioner*.

The United States of America presents in this case two individual claims on behalf of Kunhardt & Co., one for the sum of \$46,875 for damages arising from the cancellation ordered by the Government of Venezuela of a certain contract, and the other for damages to the estate "El Molino" for the amount of \$22,847.71.

The first claim is based upon the fact that Kunhardt & Co. being owners of a portion of the 400 shares stock capital of a corporation named "Trasportes en Encontrados," they consider themselves entitled to obtain directly from the Government of Venezuela the payment of damages which they allege they have suffered by the decree issued by said Government canceling the Encontrados contract.

The honorable agent for Venezuela, in his answer to this claim, sustains that the claimants have no right, as stockholders of an anonymous corporation, to set forth an action against the Government of Venezuela, to obtain an award for damages caused by the annulment of a concession granted by said Government to a citizen of Venezuela, and transferred afterwards to an anonymous corporation, domiciled in Venezuela, and whose rights, properties, and titles are legally represented by its own manager during the existence of the corporation, or by its liquidators, if the same has been put in liquidation.

The contract celebrated in April, 1897, between the minister of public works and Joaquin Valbuena Urquinaona, a citizen of Venezuela, had for its object the construction of a wooden wharf and other works in the port of Encontrados, on the river Zulia, in the State of Zulia. It was transferred two years after to an anonymous corporation called "Trasportes en Encontrados" formed by Venezuelan stockholders, with Venezuelan capital, and the price of acquisition of the rights of the grant was paid by the corporation to the owner of the concession from its own funds.

The corporation appointed in its first general assembly of shareholders a board of directors and a manager, all Venezuelans, and choose as its domicile the city of Maracaibo, capital of the State of Zulia, being, consequently, a domestic corporation of Venezuela.

By the deed of the aforesaid transfer, which was recorded in the subsidiary office of the register of Maracaibo, on the 22d of April, 1899, the corporation assumed all rights, exemptions, and privileges arising

from the grant, and bound itself to the terms of the article 16 of the contract, which reads as follows:

That any doubt or dispute arising from the intelligence of this contract should be decided by the courts of the Republic, according to its laws, and they could not in any case be a motive for an international claim.

Can it be admitted as belonging to Kunhardt & Co., shareholders of the domestic corporation "Trasportes en Encontrados," the right to claim damages arising from the breach of a contract that does not belong to them, but which is the exclusive property of the corporation "Trasportes en Encontrados?"

Being the fundamental fact for this claim the wrongful annulment of a grant, the claimants necessarily must be the owners of such grant, and said owner, or his legal representatives, is the only person entitled to claim restitution, indemnity, or compensation for the value of the property which has been taken from him. There is only one grant. The agreement between the Government of Venezuela and the grantee originates juridical ties only between the two contracting parties. That grantee was originally a Venezuelan named Joaquin Valbuena Urquinaona; subsequently all the rights and privileges of said contract were transferred and assigned Frederico Evaristo Schemel, and on or about December 16, 1897, said Schemel transferred and assigned all his rights and privileges under said contract and concession to Bernardo Tinedo Velasco. This Tinedo Velasco assigned to the corporation "Trasportes en Encontrados" all his rights and liabilities. By this last transfer the moral person, also a Venezuelan, named "Compañía Anónima Trasportes en Encontrados," became the only owner of said rights, and this fact was expressly notified to the Government of Venezuela, who gave its authorization and conformity to the transfer by a decision of the Department of Public Works, of March 14, 1899.

The juridical ties created by the original contract between the Government of Venezuela and Joaquin Valbuena Urquinaona were, by the last transfer, finally established between the said Government and the Compañía Anónima "Trasportes en Encontrados." No juridical ties of any kind exist between Messrs. Kunhardt & Company and the Venezuelan Government arising from the aforesaid contract.

The interest acquired by Kunhardt & Co. by investing their money in shares of the corporation is a private transaction between them and the corporation, and does not create any juridical ties between the Government of Venezuela and them as shareholders during the existence of the corporation.

The shareholders of an anonymous corporation are not co-owners of the property of said corporation during its existence; they only have in their possession a certificate which entitles them to participate in the profits and to become owners of proportional part of the property and values of the corporation, when this one makes an adjudication as a consequence of its final dissolution or liquidation.

The Venezuelan Commercial Code in article 133 expressly determines that an anonymous corporation constitutes a juridical person distinctly separated from its shareholders. Article 204 of the same code provides that when the managers find that the social capital has reduced one-third, they should call a general meeting of shareholders to decide whether the corporation ought to liquidate, and in its section

2 of the same article it is provided that the reduction of a capital is of two-thirds the corporation shall be put necessarily in liquidation, if the shareholders do not prefer to renew the capital or to limit the social capital to the existing funds, provided it would be sufficient to fill the object of the corporation.

The documents in evidence do not show any proof that the corporation "Trasportes en Encontrados" has been put in liquidation, neither has it dissolved in accordance with the commercial law and the statutes of the same corporation. The representation of all its rights, and its juridical person remain the same as they were at the last general special meeting held on January 19, 1901, being that representation exercised by its board of directors. At the same meeting the shareholders limited their action to intrust the managers of the company with the formulation of a protest against *the annulment of the contract, to leave in safety the integrity of its rights and for all the prejudices and damage caused to the company, its stockholders, and others connected with it, in order to make them of value in the manner and at the time they believe opportune.*

Nothing appears to have been done by the managers or board of directors of the corporation "Trasportes en Encontrados" to liquidate the same, nor to adjudicate any part of the corporation's property to the shareholders.

The integrity of the rights of the corporation remain in the corporation itself, and its exercise is specially and legally intrusted, by the common law, by the provisions of the Commercial Code, and by the social contract, to the manager and the board of directors. Therefore the said rights cannot be exercised by any other person than the directors of the corporation.

Messrs. Kunhardt & Co. have no legal capacity to stand before this Commission as claimants for damages originated by a breach of a contract, which rights and obligations are only mutually established between the Government of Venezuela and the corporation Compañía anónima "Trasportes en Encontrados."

The case of the claim of the Salvador Commercial Company and other citizens of the United States, stockholders in the corporation which was created under the laws of Salvador, under the name of the "El Triunfo Company," Limited, and the other one of the Delagoa Bay Railway Company, to which the attention of the Commission has been called by the honorable agent of the United States, have been carefully examined, and they do not present any likeness to the present claim.

By the aforesaid considerations, I consider that this first claim for damages, amounting to \$46,875, must be disallowed, without prejudice to the rights of the corporation Compañía Anónima "Trasportes en Encontrados," its stockholders, and others connected with it.

In reference to the second claim, amounting to \$22,847.71, for damages to the estate "El Molino," owned by Messrs. Kunhardt & Co., I entirely agree with the honorable Commissioner for the United States, in the appreciation of the evidence and the responsibility of the Government of Venezuela.

An award is therefore agreed to in favor of Kunhardt & Co. for the sum of \$13,947 United States gold.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of Kunhardt & Co., claimants, against the Republic of Venezuela, No. 18, the sum of thirteen thousand nine hundred and forty-seven dollars (\$13,947) in United States gold coin is hereby awarded in favor of said claimants, which sum shall be paid by the Government of Venezuela to the Government of the United States of America, in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered August 18, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the Orinoco Steamship Company, claimant,	} No. 19.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of the Orinoco Steamship Company to recover on various claims the total sum of \$1,401,539.84, with interest to be calculated upon certain portions thereof.

I.

STATEMENT OF FACTS.

The claimant is a citizen of the United States, being a corporation organized under the laws of the State of New Jersey.

On the 1st of April, 1902, the claimant, for and in consideration of its entire capital stock of \$1,000,000 and the discharge of the outstanding debts and obligations of the Orinoco Shipping and Trading Company, purchased and took over all the property, assets, and claims of that company, including the contract concession from the Government of Venezuela for the exclusive navigation by steamships engaged

in foreign trade of the Macareo and Pedernales channels of the Orinoco River, together with all claims of said Orinoco Shipping and Trading Company against the Government of Venezuela for services rendered and other causes.

The claims which are presented are three in number:

First, a claim for a balance of 100,000 bolivars overdue under an agreement of settlement made between the Orinoco Shipping and Trading Company and the Government of Venezuela on the 10th day of May, A. D. 1900, and evidenced by instruments in writing of that date, copy of which written instruments is set forth in the memorial (pp. 19-22).

Second, a claim for damages arising from the annulment by Executive decree of October 5, 1900, subsequently ratified by the legislative power, of the exclusive contract concession above referred to.

Third, a claim made up of charges for services rendered in carrying passengers and freights, and other amounts due under the terms of the contract concession, and for imposts illegally exacted, for loss of earnings from June to November, 1902, by reason of illegal and improper discriminations against the claimant company's vessels by Government agents and representatives, and for use and detention of and damages to the claimant's vessels.

The facts out of which these claims arise are, briefly, that in 1893 the Government of Venezuela had by an Executive decree reserved the Macareo and Pedernales channels of the Orinoco River for coastal service only, and thereafter, on the 8th of June, 1894, by an act of the Congress of Venezuela, a contract was made, which by various duly recognized and lawful transfers became the property of the claimant, same being set out in full in the memorial (pp. 8-12), whereby the claimant and its predecessor became possessed of the exclusive right of navigation of those channels upon and in consideration of certain terms and conditions as to the carrying of freight and passengers and the rendition of other services for the Government as therein specified.

This concession contract was to be good for the full period of fifteen years, to expire on the 8th of June, 1909.

Various services to the Venezuelan Government having been rendered by the Orinoco Shipping and Trading Company and its assignor under said contract, claims against that Government arose in favor of said Orinoco Shipping and Trading Company, and such claims and the vouchers in support thereof presented from time to time to the proper officials amounted, on the 10th day of May, 1900, to the total sum of \$532,996.85. On said May 10, 1900, a full settlement of all of such claims was made between the said Orinoco Shipping and Trading Company and the Government of Venezuela, whereby, in consideration of the extinguishment and cancellation of said claims, there was paid to said company the sum of 100,000 bolivars in cash, with an agreement to pay a further like sum thereafter, and a further agreement to extend the effective period of said contract concession for six years, to expire on the 8th day of June, 1915.

Notwithstanding the exclusive rights so granted to and being the property of said Orinoco Shipping and Trading Company under said concession, and in consideration of the extension of which for the further period of six years as aforesaid, claims of such magnitude, due as above, had been surrendered, the Government of Venezuela, on the 5th day of October, 1900, promulgated and published a decree

opening said channels of the Orinoco River to free navigation by all persons whatsoever, thereby violating and annulling the solemn compact between the Government and the company, on the faith of which more than \$940,000 had been invested in preparing for and building up the business.

Since said October 5, 1900, the Orinoco Shipping and Trading Company up to April 1, 1902, and since then the claimant herein, have continued to operate the vessels and to perform the terms of the contract concession upon their part to be kept, by reason thereof there have accrued due in favor of said companies various claims for passages, freights, and use of steamers under the contract, and other claims specified in the memorial, but not covered by the settlement of May 10, 1900, all of which are owned by the claimant here.

The total of these claims, including the claim for damages, but exclusive of interest properly allowable on the contract claims, amounts to \$1,376,539.84, to which is added a claim of \$25,000 for counsel fees and expenses incurred by claimant in endeavoring to obtain satisfaction thereof.

It being the desire of the United States Government to urge before this Commission only such claims and items as appear to be well founded, certain items forming part of this claim as originally presented to the United States Department of State have been erased and are not now insisted upon.

II.

This Commission has full and ample power to hear and determine these claims.

The Orinoco Shipping and Trading Company (Limited) was an English corporation, whose stock, however, to the extent of about 99 per cent thereof was owned by citizens of the United States. The claimant company, the Orinoco Steamship Company, was organized by said stockholders for the purpose of taking over and conducting the business of the former concern. The transfer of the properties and of the accrued claims to the claimant company, which is a citizen of the United States, as aforesaid, was made on April 1, 1902, after most of the claims had accrued due.

The entire capital stock of the Orinoco Shipping and Trading Company (Limited), with the exception of seven shares of £1 each, was and from the organization of said company had been owned by individuals who were citizens of the United States, and thereafter, on January 31, 1902, such American shareholders caused to be organized under the laws of the State of New Jersey the Orinoco Steamship Company, your claimant, the American individuals referred to becoming and now being the owners of more than 90 per cent of the capital stock thereof.

By virtue of the transfer or assignment for value, by the Orinoco Shipping and Trading Company (Limited), to the Orinoco Steamship Company, of all of the assets and properties, franchises and credits of the former company, including book accounts and pending claims against the Government of Venezuela, the latter company, a juridical person and a citizen of the United States of America, became and is now the legal and sole owner of the claims here presented.

Article 1 of the protocol of agreement establishing this high Commission expressly declares that—

All claims *owned* by citizens of the United States of America against the Republic of Venezuela * * * and which shall have been presented to the commission hereinafter named by the Department of State of the United States or its legation at Caracas, *shall be examined and decided* by a mixed commission, which shall sit at Caracas. * * *

This provision is plain, and would seem to permit of no question as to the jurisdiction of this Commission to examine and decide these claims “according to justice” and “upon a basis of absolute equity without regard to objections of a technical nature or of the provisions of local legislation.”

It is certain that the claimant is a citizen of the United States of America, and that the claims now here presented to this Commission by the Department of State of the United States are owned by it and by it alone.

III.

The various claims of the claimant are fully supported by the evidence.

As far as the first claim for the sum of \$19,200 is concerned, it being the claim for the balance of cash due upon the settlement made May 10, 1900, and evidenced by the written agreement of settlement with the Government of Venezuela itself, there can be no ground for dispute.

The facts, moreover, as to the action of the Venezuelan Government in first granting, then extending, and finally annulling the contract for the exclusive navigation of the interior waterways by opening the same to free navigation, are amply shown by documentary evidence, and there would seem to be no question either as to the facts in this respect or as to the liability of the Venezuelan Government to respond in damages for its breach of contract in such connection, the only question pertaining to this item likely to provoke discussion seemingly being as to the amount of the damages flowing from such breach.

The evidence, furthermore, amply supports the various items of the third claim. The claims for passage and freight money are due strictly in accordance with the terms of the contract and the tariffs long ago fixed thereunder. The claims for the detention and use of various vessels of the company by the Venezuelan Government are proved by the official orders and certificates covering the same, and the necessary expenses of refitting the ships, owing to injuries received while in the hands of the Venezuelan authorities, are likewise amply proven by vouchers, affidavits, and other documentary evidence.

IV.

There can be no question as to the liability of the Venezuelan Government for the acts complained of.

With respect to the first item or claim for \$19,200, being the second installment of cash agreed to be paid in furtherance of the settlement of May 10, 1900, the same being an express agreement of the Government itself to pay a sum certain within a reasonable time thereafter,

and now long overdue, the liability of the respondent Government to pay the same with interest would seem to be established beyond dispute.

In addition to the provisions of the written agreement of May 10, 1900, itself (memorial, p. 19), the liability to pay such sum in gold has also been admitted diplomatically (Diplomatic Correspondence, p. 36).

In the case of Metzger & Co. against the Republic of Haiti (Foreign Relations of the United States, 1901), submitted to arbitration by agreement between the United States and Haiti, where the respondent Government before the arbitrator sought to evade the effect of certain representations and admissions thereabouts made by its duly accredited representative, the arbitrator, Hon. William R. Day, disposed of the matter in the following language (p. 270):

I am of opinion that this arrangement agreeing to settle Metzger & Co.'s grievances, promptly accepted by the secretary of state for foreign relations of Haiti, followed by the assurance of the secretary, conveyed by the minister to the State Department at Washington, that the matter had been settled within twenty-four hours, constituted a diplomatic agreement between the two countries which, upon settled principles of international law, should have been carried into effect. It is claimed on the part of Haiti, that this correspondence amounted only to an agreement on the part of Haiti to use its good offices with the commune of Port au Prince. I am of opinion that it amounted to much more than that. * * * It can not be that good faith is less obligatory upon nations than upon individuals in carrying out agreements. * * * I do not understand that the limitations upon official authority, undisclosed at the time to the other government, prevent the enforcement of diplomatic agreements. The question came before the Chilean Claims Commission created by the convention of August 7, 1892, between the United States and Chile, in which a claim was made upon a contract entered into by the United States minister in Chile, in making which the Government of the United States claimed the minister had no authority and denied responsibility, claiming further that the agreement was in violation of the statutes of the United States, and that the plaintiff had a remedy in the United States courts. The commission decided unanimously that it was immaterial whether the minister had exceeded his authority or not, as he had made the promise as the representative of the United States in the name of his Government, which, according to the rules of responsibility of governments for acts performed by their agents in foreign countries, can not be repudiated. In the present case there is no claim that the minister was unauthorized to make the diplomatic representation stated. On the contrary, he was only carrying into effect the instructions of his Government. The learned commission referred, in support of their decision, to *Calvo Dictionnaire de Droit International*, Volume II, page 170, and *Calvo Dictionnaire International*, Volume I, section 417; *Moore's Digest International Arbitration*, volume 4, pages 3569-3571. Nor is there any more avail in the argument that the remedy of Metzger & Co. is to be sought in the courts of Haiti against the commune. Even had Metzger & Co. such a right, this would not affect the right to arbitrate the claim as has been done in this case. By the terms of the protocol the arbitrator is competent to take jurisdiction of the claim so far as the liability of the Government of Haiti is concerned. (4 *Moore International Arbitrations*, p. 3571.) * * * A diplomatic arrangement fairly and honorably entered into should, in my judgment, be carried into effect. * * *

An admission of debt made in the course of diplomatic negotiations and reiterated in a subsequent offer to pay the amount admitted in certain installments (Diplomatic Correspondence, p. 38) is now no more to be denied or refuted by the nation which made it than any diplomatic agreement.

The diplomatic admission of the debt in July, 1901, and the subsequent offer to pay the amount thereof in installments, absurdly small though they were, was also in effect a diplomatic representation as to the validity and binding force internationally of the entire settlement evidenced by the agreements in writing of May 10, 1900.

As to the liability of Venezuela with respect to the claim for compensation for damages suffered by reason of the annulment of the concession of navigation by the arbitrary decree of October 5, 1900, there would seem to be no more doubt.

That the concession contract for the exclusive navigation of the interior mouths of the Orinoco River by vessels engaged in foreign trade constituted a valuable property right would seem to be indisputable. That the contract was legal and mutually binding will hardly be controverted. Acting upon the faith of the grant, the claimant company and its predecessors in interest had laid out over \$940,000 in United States currency in acquiring ships and preparing to do and perform the various services incident to the business of a common carrier in those waters. In addition to promoting the commerce of the country and providing for the convenient movement of its inhabitants and their goods, and for the transportation of its troops and stores, the Venezuelan Government reserved to itself a distinct advantage, of which it has continuously availed itself, of having transported its officials, employees, troops, and supplies at one-half of the ordinary tariff rates.

That the concession was a valuable one is evidenced by the fact that during the years 1899-1901, although revolution was rife and the entire business of the country was much disturbed, the average net earnings of the company's steamers plying the waters covered by said concession amounted to \$56,578.95 per annum.

That a sovereign nation is bound to indemnify foreigners for its failure to perform its contracts or to protect their property within its borders is settled in principle. (Phillimore, *Int. Law*, vol. 2, p. 8; Martens, *Droit des Gens*, vol. 3, ch. 3, p. 299; Wildman, *Int. Law*, 193; Woolsey, *Int. Law*, 38-112; Report United States and Venezuelan Mixed Commission, p. 297; Vattel, book 2, ch. 8, sec. 104; Bluntschli, *Int. Law Cod.*, secs. 386, 380.)

How much greater is the responsibility of a nation which deliberately and without just cause destroys the property of such foreigners? That a contract right founded upon a consideration good in law to do a thing in the contract specified is a property right is also settled; that a grant of a monopoly of navigation or of carriage for revenue or hire is a property right is equally clear.

Article 691 of the Civil Code of Venezuela expressly recognizes and declares that a property right may rest in contract alone (por efecto de los contratos), and as the concession or grant of a monopoly as here results from and rests in the contract of the parties to it, it seems certain that such a concession or grant is properly within the definition of Venezuelan municipal law, as it has repeatedly been declared to be by high tribunals administering international law. (See case of the Delagoa Bay Railway, 2 Moore *Int. Arbitrations*, pp. 1879 et seq.; "The Cheek Claim," *id.*, p. 1899.)

In the very recent case of the United States against the Republic of San Salvador, respecting the claim of the Salvador Commercial Company, usually referred to as the case of the "El Triunfo Company," the controversy had its origin in schemes to establish and develop a port on the bay of Jiquilisco, in the Republic of San Salvador, and the wrongful revocation by San Salvador of its concession for such purpose granted to the El Triunfo Company. The grantee's privileges were exclusive as to steam navigation of the port and the transship-

ment of passengers and merchandise exported through the port for the period of twenty-four years. The contract concession in that case contained many provisions similar to those of the contract concession in the case here under consideration. The concessionaire company entered upon the performance of its obligations as fixed by the terms of the concession, and conducted the business during the years 1895, 1896, and 1897, without, however, deriving any profit therefrom. During the first six months of 1898 the company's receipts exceeded all losses and expenses of every kind by the sum of \$17,000. Early in 1899 the President of San Salvador issued an edict closing the port against all importations, thus striking down and practically canceling and destroying the concession which that Government had theretofore granted.

In the opinion of the umpire, Sir Henry Strong, concurred in by the American Commissioner, Mr. Don. M. Dickinson, it is said that—

It is not the denial of justice by the courts alone which may form the basis for reclamation against a nation, according to the rules of international law. "There can be no doubt," says Halleck, "that a state is responsible for the acts of its rulers, whether they belong to the legislative, executive, or judicial department of the government, so far as the acts are done in their official capacity."

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Said Mr. Fish to Minister Foster: "Justice may as much be denied when it would be absurd to seek it by judicial process as if denied after being so sought."

Again, this is not a case of the despoilation of an American citizen by a private citizen of Salvador, on which, on appeal to the courts of Salvador, justice has been denied the American national, nor is it a case where the rules applying to that class of reclamations, so numerous in international controversies, have to do. This is a case where the parties are the American nationals, and the Government of Salvador itself as a party to the contract; and in this case, in dealing with the other party to the contract, the Government of Salvador is charged with having violated its promises and agreements by destroying what it agreed to give, what it did give, and what it was solemnly bound to protect.

So one of the most respected authorities in international law, Lewis Cass, has laid down the undoubted rule and its exception, as broad as the rule, when he says that "When citizens of the United States go to a foreign country, they go with an implied understanding that they are to obey its laws and submit themselves in good faith to its established tribunals. When they do business with its citizens or make private contracts there, it is not to be expected that either their own or the foreign government is to be made a party to this business or these contracts, or will undertake to determine any dispute to which they give rise. * * *

"The case is widely different when the foreign government becomes itself a party to important contracts and then not only fails to fulfill them but capriciously annuls them, to the great loss of those who have invested their time, labor, and capital in their reliance upon its good faith and justice."

In any case, by the rule of natural justice obtaining universally throughout the world wherever a legal system exists, the obligation of parties to a contract to appeal for judicial relief is reciprocal. If the Republic of Salvador, a party to the contract which involved the franchise to El Triunfo Company, had just ground for complaint that under its organic law the grantees had, by misuser or nonuser of the franchise granted, brought upon themselves the penalty of forfeiture of their rights under it, then the course of that Government should have been to have itself appealed to the courts against the company and there, by the due process of judicial proceedings, involving notice, full opportunity to be heard, consideration, and solemn judgment, have invoked and secured the remedy sought.

It is abhorrent to the sense of justice to say that one party to a contract, whether such party be a private individual, a monarch, or a government of any kind, may arbitrarily, without hearing, and without impartial procedure of any sort, arrogate the right to condemn the other party to the contract, to pass judgment upon him and his acts, and to impose upon him the extreme penalty of forfeiture of all his rights under it, including his property and his investment of capital made on the faith of that contract.

Before the arbitrament of natural justice all parties to a contract, as to their reciprocal rights and their reciprocal remedies, are of equal dignity and are equally entitled to invoke for their redress and for their defense the hearing and the judgment of an impartial and disinterested tribunal.

It follows that the Salvador Commercial Company and the other nationals of the United States who were shareholders in El Triunfo Company, as hereinbefore named, are entitled to compensation for the result of the destruction of the concession and for the appropriation of such property as belonged to that company * * *.

The annulment by the Government of Venezuela of the concession contract in the case at bar, without notice to the other party to the contract and without affording it an opportunity to be heard, puts that Government in the position of having destroyed property of the claimant company, and entitles it to receive by way of compensation therefor substantial damages.

There can, we think, be but little question as to the amount of the damages suffered by the claimant in such respect. Whether we regard as a basis of computation the value assigned to the contract concession in the settlement of the company's claims on May 10, 1900, whereby the extension of six years further time was secured, or whether we regard the evidence as to the earning capacity of the company, in either event the amount claimed in the memorial, viz, \$1,209,701.05, is shown to be a fair and reasonable estimate of the loss accruing to this company by the unwarranted destruction of its property rights. In this connection, it is interesting to observe that in the El Triunfo case above cited the umpire awarded to the claimant the sum of \$750,000 as damages for the annulment of its concession, although its invested capital approximated but a fourth of that outlaid by the present claimant, and its business, with the exception of a single period of a few months, had been done at a loss, while in the case at bar net earnings are shown averaging more than \$56,000 per annum.

As to the items of the third claim, we think there can also be no question as to the liability of the Venezuelan Government. Such of the items as are for passage, freight, etc., are expressly due under the terms of the contract, in accordance with the rate of tariff as fixed under that contract. That the Venezuelan Government is liable for the use of the vessels of the company taken by it for its own use, and for damages to the vessels while in its possession, and for the necessary repairs which had to be made upon them in consequence thereof, and for stores and supplies taken from the company's ships by the military officers, and that it is equally liable for national imposts illegally levied, there can, it would seem, be no question. The amounts of the various items of claims on such accounts are fully and particularly set forth in the proofs in support thereof.

In regard to the item of \$61,336.20 claimed for wrongful discriminations against the company by the consuls of the Venezuelan Government in refusing to clear the company's vessels for the Orinoco ports during the months of June to November, 1902, inclusive, attention is invited to the typewritten copies of certificates of the harbormaster at Port of Spain, Trinidad, from which it appears that, notwithstanding the then existence of the so-called blockade of the Orinoco River and ports, which was made the basis of the consul's refusals to clear the claimant company's steamers, said official or his vice-consul did clear for such ports on several occasions ships laden with general cargo belonging to other owners, viz, the *Alianza* and the *Rescue*, and further, that 1,375 vessels of various sizes, all flying the Venezuelan flag,

and with a few exceptions in ballast, all carrying general cargo, viz, cocoa, balata, gum, rubber, oxen, mules, horses, asses, goats, pigs, hides, and the like, entered the port of Port of Spain from various ports in Venezuela, including the Orinoco River ports, and practically the same number of said vessels left said port during said period laden with general provisions, hardware, dry goods, etc.

Unlawful discrimination by governments in the affairs of neutrals resulting in interruption of business and consequent loss of profits and receipts, affords a basis of reclamation and corresponding liability to answer for damages equally with other positive torts.

There can be, from the facts of this case, no question that the Government of Venezuela is liable to the claimant upon each of the claims presented and in the full amount claimed.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF OF the Orinoco Steamship Company, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 19.
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MOTION TO AMEND MEMORIAL.

Now comes the United States on behalf of the Orinoco Steamship Company, claimant, by Robert C. Morris, their agent, and moves leave of this honorable Commission to amend the memorial heretofore filed in the above-entitled claim in the following particulars:

(1) On page 6, in section No. 6, after the word "value" strike out the words "so acquired by your memorialist," and insert in place thereof the words "theretofore owned by the Orinoco Shipping and Trading Company, Limited;" so that the same shall read as follows:

6. Among other franchises and property rights of value theretofore owned by the Orinoco Shipping and Trading Company, Limited, was the exclusive right, etc.

(2) On page 25, in section 15, line 3, after the word "Limited" insert the following words "having theretofore fully performed the obligations on its part required to be performed by and under said contract of June 8, 1894, and;" so that the same shall read as follows:

15. Notwithstanding the promulgation of said executive decree of October 5, A. D. 1900, the Orinoco Shipping and Trading Company, Limited, having theretofore fully performed the obligations on its part required to be performed by and under said contract of June 8, 1894, and with the object and purpose of, etc.

ROBERT C. MORRIS,
Agent of the United States.

The Orinoco Steamship Company. (Claim No. 19.)

Filed July 14, 1903.

RUDOLF DOLGE,
Secretary on the part of the United States.
J. PADRON UZTARIZ.

Honorable Members of the American-Venezuelan Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied with due care the declaration in the claim of the Orinoco Steamship Company, and submits:

The reclamation of the Orinoco Steamship Company is based on the rights and faculties which were transferred by another, an English company, styled the Orinoco Shipping and Trading Company (Limited), which latter company assumed to have the right to claim from the Venezuelan Government for breach of contracts of which it was the cessionary. We shall hereafter set forth whatever may be relevant in respect to this transfer and in regard to the character of American citizen which the claimant company seeks to arrogate to itself.

In the first place, the simple admission by the Commission of a reclamation like that with which we are dealing, for decision by that body, is an act which in itself clashes openly and visibly with the rules established by the protocol signed in Washington the 17th of February of this year, in virtue of which the Commission has been created. In effect the protocol referred to stipulates that the questions to be submitted to the international tribunal shall be decided on the basis of and in accordance with the most absolute equity, and the Commissioners have sworn to decide according to this rule; nevertheless, the Commission would completely set aside that basis of equity, if it should admit for its decision a question that has arisen between parties bound by contracts concluded with all the formalities of law, hearing only the allegations and arguments of a single one of the contracting parties and depriving the other of all its means of defense and of all its exceptions; and in no other way would the Commission proceed in the case of admitting to trial the claim of the said company, because Venezuela, one of the contracting parties, and with the same rights and faculties on its own part, could not defend itself before the Commission as it could before a court of law; and so much is this a fact, that although Venezuela has claims of very good origin to make of the company, it can not substantiate them before the Commission, which lacks jurisdiction to determine these questions. Therefore, there would be favored openly and greatly a single one of the parties to the detriment and injury of the rights of the other; there would be granted in advance, without trial of the case, a better right and a more advantageous situation to one only of the parties, depriving the other of all its legitimate means of defense; and as may be seen by the mere presentation of these considerations, without the need of further demonstration. Such respective situation of the two parties is in open opposition to the most simple principles of equity; for one of the parties, facilities, privileged means of proof and many other advantages, whilst for the other party, deprivation of all its ordinary legal recourses, the rejection of its rights in advance and the impossibility of supporting its charges; Venezuela can not claim before the Mixed Commission the losses and damages which may be caused it by the lack of compliance with the contracts which it has concluded with American citizens. Thus, from this point of view the Commission, proceeding in accordance with its fundamental rule, which is the strictest equity, should reject this reclamation.

And the said reclamation should also be set aside because, as the claimants base their reclamation on contracts which they have concluded with Venezuela, or rather, contracts in which they have substituted themselves voluntarily and deliberately for Venezuelan

citizens, there must be established in advance whether those contracts are valid or not, and if they are valid, as in effect they are, all and every one of their clauses must be equally valid and obligatory; none of these clauses can be set aside nor greater legal force be attributed to one than to another; and therefore, just as full legal force is attributed to the clauses which the claimant company invokes on which to base its reclamation, so also should full legal force be attributed to the clauses of those contracts in which the contracting party—who has to-day been substituted by third parties who have accepted those contracts in all their parts and provisions, voluntarily and deliberately—obligates himself to have recourse to the Venezuelan authorities for the adjustment of every question which may arise between the parties, and that these questions can never be the motive or occasion of diplomatic or international reclamations. Therefore, if the clause is valid on which the claimant supports himself and by which Venezuela obligates herself to concede to the contracting party the right to establish a line of steamers between Ciudad Bolivar and Maracaibo and to grant to the contracting party the exclusive use of same for a fixed period of time, it is in all respects eminently just, equitable, reasonable that for both parties there should also have force and be obligatory the provision which contains the clause relative to the authority which should adjust the questions between the parties; and further, it is also eminently just, equitable, reasonable, indisputable, that if said contracting party violates this clause and seeks to give to his reclamations an international and diplomatic character, he should be obliged in virtue of the same basis which he invokes to have recourse to the authorities which he himself voluntarily and deliberately appointed for the adjustment of controversies between the contracting parties. Therefore, the honorable Commission would abandon its fundamental basis of absolute equity from the moment when it should permit one of the contracting parties to violate in so apparent and arbitrary a manner the contract on which it bases its claims; the Commission, with no reasonable motive, with no legal grounds, would set equity completely aside if it should esteem as valid only those clauses of the contract which favor the claimant party, and should annul those others which serve as guaranty to both the parties, since all the provisions contained in the contract, which is the law in force between the parties, are equally valid and obligatory for both the contracting parties. For these reasons, which are within the grasp of the most ordinary intelligence, reasons which not only are in perfect accord with the legislation established in all cultivated and civilized countries, but also with the most elementary principles of equity and justice, the honorable Commission should reject the reclamation that is here dealt with, because by the mere act of introducing same, the claimant party violates in the most flagrant manner the contract on which he seeks to base his claims.

According to the honorable agent of the Government of the United States of America, the reclamation of the Orinoco Steamship Company contains three points, to wit:

First. The balance of 100,000 bolivars which Venezuela owes to the Orinoco Shipping and Trading Company (Limited), by virtue of the transaction which on May 10, 1900, was concluded between both contracting parties and in which the Government of Venezuela for 200,000 bolivars which said company was to receive, paid all the claims which up

to that date and for all motives were held by the company against the Government; including in that amount the payment of all the services which the company might have to lend to the Government to the 1st of July of the same year. The company received on that occasion 100,000 bolivars, and the remaining 100,000 bolivars are those which the new company, the Orinoco Steamship Company, now claims. This part of the claim is sufficiently opposable; in the first place, because a new creditor has been substituted for the former one without notice and without the consent of the debtor, and in credits which are not payable to order notification to the debtor is necessary for their transfer, which requisite has here been omitted, because Venezuela did not subscribe to any obligation to the order of its original creditor for those 100,000 bolivars. And, on the other hand, although this credit of the original company is evidenced by a document which has full legal force, there is not for this reason extinguished or renounced the right which Venezuela has to collect the amounts which the original company is owing to her and to set over against it the corresponding compensation; and further, the cessionary company bound itself in the very document on which it bases this part of its reclamation, to the provision that every question which might arise by reason of that agreement should be decided precisely by the tribunals of Venezuela and could never open the way to international reclamations. According to what has been set forth, this part of the claim is not in order; first, because the Government owes nothing to the Orinoco Steamship Company; secondly, because if the Government owes anything in the said relation to the Orinoco Shipping and Trading Company, Limited, this company owes also to Venezuela net amounts in various other relations, and it is necessary to settle the compensation in order to determine definitely which is creditor and which debtor; and thirdly, because the company on concluding that transaction expressly bound itself to submit all differences to the tribunals of Venezuela, and from the moment that it ignores this capital agreement Venezuela has also the right to ignore her obligations, now that her rights have been denied. Such a decision—that is to say, that the honorable Commission should reject this part of the reclamation (in the event that in spite of the reasons above set forth it should elect to admit the same to a hearing) for the weighty circumstances alleged, all of which are based on the most absolute and evident equity—is formally imposed.

Second. In the second place, the claimant company bases a part of its reclamation on the fact that the National Government, by resolution of the 5th of October, 1900, on opening to free navigation the Macareo and Pedernales channels, annulled by the act the concession which the company claims to have obtained for the exclusive navigation of those channels. Such a basis is also absolutely out of order, because the resolution of the Government has not injured nor can injure in any manner the concession of the company, because, as is stated by the fundamental contracts—and as may readily be seen—the ends of that concession are entirely distinct and foreign to the present claims of the company; the contracts state that the concession is for the *establishment of a line of steamers between Ciudad Bolivar and Maracaibo*, and the fact that the Government of Venezuela should subsequently open to navigation two mouths of the Orinoco previously closed (from the year 1893), can not injure that

concession in any manner; the navigation of the Orinoco is free, and that circumstance does not injure any line of steamers nor any individual, but rather it favors all. The pretensions of the claimant in the respect of which we are treating are in every way *inadmissible and absurd and unfounded*; the concession of which the contract treats is for the *establishment of a line of steamers between Ciudad Bolivar and Maracaibo*, which does not imply that only the holder of that concession shall have the *exclusive right to navigate in the Orinoco River*; such a pretension is an untenable absurdity; and so much the more, in that the company has not had its steamers in service. To the contracting party, whose rights were transferred to the Orinoco Shipping and Trading Company, Limited, there was never granted the *exclusive navigation of the Macareo and Pedernales channels*, nor anything of the sort; these channels had been closed, to shut out contraband trade, from the year 1893, and when the contract was signed, in 1894, there was *permitted*, there was simply *permitted* to the contracting party the navigation of same, and a permission is very far from being the same as the company to-day pretends is the *privilege of exclusive navigation by the Macareo and Pedernales channels*. If on the basis of this simple permission the company claims to have exclusive privilege of navigation in the Orinoco River, it might also claim the exclusive navigation in that part of the sea which lies in the route from Ciudad Bolivar to Maracaibo; one thing is as absurd as the other. That privilege of exclusive navigation has never been granted by the Government of Venezuela; it is not stated in the contract nor does anything therein cause it to be inferred; it is in itself an absurdity. Thus, therefore, these grounds of the reclamation should be rejected and everything which it contains relative to same should be blotted out.

Third. In regard to the third foundation of the reclamation, the Orinoco Shipping and Trading Company, Limited, and not the Orinoco Steamship Company, has the right to payment for the services which it has lent the Government of Venezuela, but in accordance with the special tariffs which have been agreed to between them both.

The claimant company states, as a basis to its claim, that when in May, 1900, it claimed from the Government of Venezuela \$532,996.85 it was satisfied to reduce this amount to 200,000 bolivars, because its contract of navigation was extended for six years more; that is to say, six years which should commence to run on the 8th day of June, 1909. In a word, the company claims that it paid to the Government of Venezuela a sum which was deducted from the amount of its reclamation for the concession of the six years' extension. Such a contention is absolutely false, because, as may be very well seen by the document of the transaction of May 10, 1900, the extension does not figure therein as estimated in any amount or in any other manner, and the document of the transaction being that which contained the bases and results of that compact, it is clear that such an important factor should not be omitted, and therefore the claimant can not allege that consideration which is not anywhere in evidence nor which may be presumed to have existed. Neither can he support himself on the fortuitous circumstance that the extension of the concession and the transaction bear the same date, because basing himself on that circumstance, entirely fortuitous, he could also allege that all the acts of the Government on that day are connected with the transaction. The Executive resolution which granted the extension of six years equally fails to contain the

circumstance which the company invokes, nor is there in that resolution even a word from which it may be inferred that the company paid for that extension, as it pretends, but on the contrary it subjects it to certain conditions with which the company has not complied. Therefore there is no connection of any sort between the transaction and the extension, and thus the company can not invoke as a basis for its reclamation the assertion that it paid to the Government an amount given to the end that said extension should be granted to it. The resolution and the transaction have no connection whatever and they can not be considered as bound together by the simple statement of one of the interested parties. In the transaction there were no other grants than those which are recited by the document that was subscribed to by the parties for that purpose, and to that document which furnishes full evidence between the parties there can not be given a greater extension than that which it has in itself.

It is also absolutely false, as has already been demonstrated, that the interests of the company have suffered detriment by virtue of the Executive resolution of October 5, 1900, because, as has been said, the free navigation of the Macareo and Pedernales channels does not in any way affect its rights, because its concession is not for the *exclusive navigation of said channels* as it pretends, but only for the establishment of a *line of steamers between Ciudad Bolivar and Maracaibo*, and it is simply *permitted* to navigate in the said channels. The circumstance that the cessionary company has invested, as it affirms itself, the sum of \$940,000 in its vessels and preliminary works, can not in any manner affect the Government of Venezuela, because the company did not enter into these expenses by order of the Government, but because by its own statement it deemed it advisable to do so, and because it was rendered necessary in order to assure so far as possible the favorable result of its enterprise. These expenses may very well have been entered into by miscalculation; and it would be wholly absurd to pretend that Venezuela should be held responsible for the bad transactions of third parties. On the other hand, attention is sufficiently claimed by the fact that that investment of funds should have taken place in 1900 when the contract had already existed for six years, since 1894; for that is to say, at least, that during all that previous time the contracting party had not fulfilled his obligations.

The company also claims to have complied exactly with its obligations, and this is absolutely false, because up to date, as the Government of Venezuela can very well prove, the said company has never exactly and fully complied with its obligations.

There is also rejected, in the most formal and conclusive manner, the item of \$25,000 which the company claims to have expended in efforts made with the end of obtaining justice, because the Government of Venezuela has never refused to fulfill its obligations, although it is certain that it should not and could not have accepted in any manner as laws for its guidance the absurd claims of the company which it has always sought to favor in every possible way.

I have also to make an observation which I esteem as very much in order, and this is, that there should be presented in original all the documents to which the claimant company refers, because the printed forms to which the company has reduced them can not be accepted, insomuch as Venezuela has had no part therein. These documents

should be presented in original in order to be able to make all objections which their study merits, because the printed forms which have been presented to the Commission can not be equivalent to the documents themselves; and, once for all, Venezuela objects to those published forms and disavows the documents which figure therein as having emanated from her. Therefore, if the documents are presented in original she will investigate them and will reject or accept those which should be rejected or accepted.

If the Government of the United States, before having taken up this reclamation, had taken into account all and every one of the documents and antecedents of same, perhaps it would have rejected the reclamation totally, as it declares to have done in respect of certain of the items which it contained. Now, in regard to what the Government of Venezuela may be owing to the Orinoco Shipping and Trading Company, Limited, for passages and other services, it is necessary in the first place to arrange between both parties as to the prices for certain services which are not stipulated in the tariffs agreed upon; for example, the lease or charter of a steamer, because from this moment there is rejected the computation which the claimant makes on the basis of 100 pesos per diem, because that is an arbitrary valuation made by him, without the consent of the other party, by and for himself; and further to determine what are the services which the Government is obliged to pay for. When all this shall have been agreed upon, determined, and established it will still remain to take into account what the company owes to the Government for divers causes, in order to strike a balance and to determine definitely which is creditor and which debtor.

It is also to be observed that the item of the claim relative to imposts illegally paid by the company, as it affirms, which item amounts to \$19,571.34, in the same, that is to say, in that item there are included payments which, according to the same company, correspond to the years 1898, 1899, and 1900; and according to the transaction concluded between the Government of Venezuela and the company this latter, in virtue of that arrangement, could claim nothing, absolutely nothing, from Venezuela for reasons prior to that date, 10th May, 1900, and consequently in the transaction of that date there were included certain of the items which it now claims newly, and therefore these items should be rejected. Moreover, it is now timely to state that Venezuela solemnly rejects, once for all, the items of the reclamation which belong to a period prior to May 10, 1900, because all those which the company had or could have had against Venezuela were covered by the said transaction.

It is also a fitting time to bring to the knowledge of the honorable Commission that Venezuela has, in accordance with her contracts, entered an action against the company for the payment of losses and damages arising from the failure to comply with the contracts, and as Venezuela has a superabundance of proofs, it is probable that the said company will be found to be owing to Venezuela much more than that which it so unjustly claims to-day.

The transfers which the Orinoco Shipping and Trading Company, Limited, may have been able to make to the Orinoco Steamship Company, or to whatsoever other persons, do not affect Venezuela in any way, because they have not been made in accordance with the contracts which said company is obliged to carry out; and also without having

fulfilled the requirements of law. Moreover, in the denied supposition that those transfers should be valid, it would equally fail to affect Venezuela, as at the time when the acts occurred which are invoked as a basis of the claim the Orinoco Steamship Company did not exist and could not have had any rights before coming into existence. In order that it might be protected to-day by the United States of America it would be necessary, in accordance with the stipulations of the protocol, that the damages, in the event of being a fact, should have been suffered by an American citizen, not that they should have been suffered by a third party of different nationality and later transferred to an American citizen. Such a proceeding is completely opposed to equity and to the spirit of the protocol. And it avails nothing that the former company should have manifested to the Government of the United States that the stock of the company was held for the most part by American citizens, because the personality of the company and that of the stockholders are entirely distinct, and just as the stockholders can not support themselves by the exceptions which may be deduced from the juridical personality of the company, so also can the latter not avail itself of those which may be deduced from the personality of the stockholders. Thus, therefore, neither first nor last can the Orinoco Shipping and Trading Company, Limited, be regarded as an American personality, and consequently the claim should be rejected.

A great part of the enormous sum claimed arises from the fact that the company estimates at \$82,432.78 the net annual revenue which it claims to have failed to receive during the eight years eight months and three days which remain for its contract to expire, because it says that this contract was annulled in fact by the Executive resolution of October 5, 1900. To this there must be objected, in the first place, that, as has already been shown, the said resolution has not in fact annulled the contract, because in same there has never been granted the exclusive privilege of navigation in the Macareo and Pedernales channels, but this was simply permitted; and further, that the estimate is entirely arbitrary. It also claims for the six years, extension granted by the resolution of 10th May, 1900, at the same rate of \$82,432.78, and in this respect, even in the supposition that the annual rate which it establishes should be accepted, the company lacks the right to charge for those six years, because the Government granted that extension without any corresponding concession on the part of the company, and on the contrary, subjecting it to conditions which the company did not fulfill, and consequently it withdrew that concession on the day when it became convinced that the company was not fulfilling the conditions; and to such procedure it had perfect right, because it was a gratuitous concession on its part which could in no way bind it, and much less when the conditions which it imposed upon its liberality were not complied with. Therefore the company could in no case claim for those six years which were withdrawn from it, because the Government effected the withdrawal in the same manner in which it granted the concession, by and of itself, on the 14th of December, 1900, by Executive resolution, in which are enumerated the reasons which actuated it. Thus, then, that part of the claim—that is to say, the part relative to that which the company claims to have failed to gain during the years which remain to it—is entirely irrelevant.

From what has been set forth there may be deduced:

(1) That the mere admission of the claim of the Orinoco Steamship Company, as cessionary of the Orinoco Shipping and Trading Company, Limited, by virtue of a void transfer, which has not been notified to nor accepted by the Government of Venezuela, and made in express contravention of the fundamental contracts, the mere admission of the claim to be decided by the honorable American-Venezuelan Mixed Commission, that simple fact, is entirely opposed to equity, because it treats of reclamations between two contracting parties, and it would give to a single one of them facilities and favors which are denied the other, who is deprived of its legitimate means of defense, when, according to equity, both contracting parties should be exactly equal in their rights and faculties and should have identical means of defense.

(2) That if it is on the basis of his contracts that the claimant founds his reclamation, as, according to equity and the legislation of all countries, the clauses of a contract concluded with all the formalities of law can not some be valid and others void, and as the claimant grounds himself on certain clauses of those contracts, while in same there are others by which he is obligated to have recourse to the tribunals of Venezuela for the adjustment of all his differences, it is equitable, absolutely equitable, that it should not be left to one of the parties openly to violate his agreement; and therefore, as this claimant, on obtaining the transfer of said contracts, voluntarily and deliberately bound himself to submit himself to the tribunals of Venezuela and never to have recourse to diplomatic means, he should in equity and in justice be compelled to comply with the compact, and consequently that reclamation should be set aside, the presentation of which involves in itself the most flagrant violation of the contracts by which it assumes to be supported.

(3) That the \$19,200 which the company claims as the balance of the transaction of May 10, 1900, should have set against them the net amounts which the company owes to Venezuela for other matters, and that so long as the parties do not concur in regard to these accounts, and so long as the proper balancing of accounts is not effected, it is impossible to determine which is the creditor and which is the debtor.

(4) That the grounds which the claimant invokes, in saying that the Government of Venezuela, by Executive resolution of October 5, 1900, in fact broke the contracts celebrated and diminished the rights of the claimant, are absolutely false and inadmissible grounds, because the Government of Venezuela has never conceded to anybody the *privilege of exclusive navigation by the Macareo and Pedernales channels*, but on the contrary those channels having been closed since 1893, it simply *permitted*, by the contract of 1894, that navigation might be effected by those channels, which it declared open to all the world on October 5, 1900. Therefore the company can not have suffered in any way from that declaration, because its contracts do not treat of the privilege of navigation by said channels, but of the establishment of a line of steamers between Ciudad Bolivar and La Guaira.

(5) That the extension of six years granted to the Orinoco Shipping and Trading Company, Limited, was not conceded to this company in virtue of the concession which it claims to have made in reducing a part of the claim which in May, 1900, it had introduced against the Government of Venezuela, but was granted to it without any conces-

sion on its part, while imposing certain conditions the lack of compliance with which would place Venezuela in a position to suspend the concession, as it did, and in the same manner in which it had granted it, by Executive resolution of 14th December, 1901. Therefore the company can claim absolutely nothing for the withdrawal of that concession, because it was through its own fault that it was withdrawn; and even if it had not so turned out, the Government had the fullest right to withdraw that concession which had been an act of liberality on its part. Moreover, even in the event that the extension of six years should be in force, the Orinoco Steamship Company could not claim anything in that respect, because in granting the concession to the Orinoco Shipping and Trading Company, Limited, the privilege to transfer same was not accorded to it, and consequently it is an inalienable concession.

(6) That the Government of Venezuela can have no responsibility of any sort because the company should have made an investment of \$940,000, because such action took place without the intervention of any kind on the part of Venezuela, which should not be liable in any case for such an investment that could have been governed by more or less well-grounded calculations of the company.

(7) That it is to be noted that such investment took place after the contract had been in force for seven years, and that this proves that the contracts had not been fulfilled in any manner.

(8) That in respect to the amount which the claimant charges for passages and other services, it will be first necessary to come to an agreement in regard to the passages for which the Government really should pay, and afterwards to strike the balance that has already been spoken of, at the same time taking note that the 100 pesos per diem which the claimant charges for the lease of its vessels in the service of the Government is an entirely arbitrary valuation, because that valuation should be made by mutual agreement.

(9) That between the transaction of May 10, 1900, and the Executive resolution of that same date there is no connection of any kind, as is pretended by the claimant, who alleges that the extension was granted by reason of the fact that his claim having amounted on that date to \$532,996.85, he reduced it to 200,000 bolivars, because it was taken into account that the company ought to produce a certain amount in each year, and an equivalent was thereupon established; that this agreement should figure in the transaction and does not so figure, and that the connection of this nature which the claimant alleges to exist between both acts of the Government can not be deduced from a simple coincidence in the date of both documents.

(10) That the estimate which the claimant makes for the years which are lacking to the termination of the contract, and for which he charges the Government a given sum per annum, is entirely out of order and unfounded, because the Government has not failed in any manner to fulfill its agreements, and consequently is under no obligation to answer to the company in the particular indicated, and that in the event, which is denied, that it should so have to answer, the appraisement of these damages is not in any manner the province of the interested party; that the Government from this time forth rejects that estimate in itself as being entirely unfounded, and further because the appraisement is arbitrary; and in regard to what is claimed in the same respect in relation to the six years of the extension, it rejects it

absolutely, as much because the reclamation is in itself unfounded and out of order for the same reasons that are advanced relative to the years which are lacking for the natural termination of the contract, as because that extension was in any case withdrawn by the Government of Venezuela in due form and for more than sufficient cause.

(11) That the transfers which the Orinoco Shipping and Trading Company, Limited, claims to have made to the Orinoco Steamship Company are completely void, and Venezuela rejects them from this moment forth because they have been made in opposition to the agreements which the first company accepted voluntarily and deliberately; because due notification of same was not given and because they lack all the formalities which in general similar acts require.

(12) That the documents should be presented in original to be able to give them the study which they merit, because the printed forms produced have been made by the interested party without the control and supervision of any authority; and that in this respect Venezuela reserves the right to reject or to admit, after an examination of the original documents, those which it may consider to call for such action.

(13) That even if the transfer invoked were valid, as the damages, in the event of being a fact, occurred before the company was created, they can not have been suffered by an American citizen, and consequently the reclamation is not within the terms established in the protocol; and on the other hand, neither can the fact be invoked that 99 per cent of the capital stock was held by American citizens, because the juridical personality of the stockholders has no effect upon the juridical personality of the company, which has a separate moral entity, nor vice versa, and therefore that circumstance can not be invoked, and so much the less in that it is unverifiable.

(14) That the item of \$25,000 for expenses in seeking justice is also rejected absolutely as being unfounded and out of order, because Venezuela never has refused to satisfy its obligations, although it is indeed certain that it has not accepted, nor will accept, as laws the impositions and pretensions of those who have entered into contracts with her.

(15) That in the transaction of May 10, 1900, there were included all the claims which the company might have against Venezuela for any reason prior to that date, and that in the present claim items appear, among others that of "imposts and contributions illegally paid," which are prior to that date.

(16) That Venezuela has also reclamations against the company, and that with this motive there is pending before the competent tribunal an action against the company.

In synthesis, the Government of Venezuela rejects in all and every one of its parts for the reasons set forth, and for others which it promises to set forth and substantiate at the proper time, the claim of the Orinoco Steamship Company, of whose existence it came to have indirect notice in the month of May of this year, through a published report in the *Gaceta Municipal*. And it also wishes to bring to the knowledge of the honorable Mixed Commission that the Orinoco Shipping and Trading Company (Limited) has taken part in the internal affairs of the nation, as is proven by the evidence which I produce, together with sundry publications, adding that this company, up to date, in spite of having received the most decided and efficacious

protection, has never fulfilled its obligations to the Government of Venezuela. On all the grounds alleged I respectfully ask of the honorable American-Venezuelan Mixed Commission that it may be pleased to set aside as unjust, illegal, and unfounded the claim of the Orinoco Steamship Company, which presents itself as cessionary of the rights and faculties of the Orinoco Shipping and Trading Company (Limited), to which the tribunals of the nation are open for the allegation of its rights, and to which procedure it is obligated by the contracts on which it bases its reclamations, which contracts it accepted and bound itself to observe voluntarily and deliberately.

Caracas, 13th of July, 1903.

(Signed)

FR. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

<p>THE UNITED STATES OF AMERICA ON BEHALF of the Orinoco Steamship Company, claim- ant,</p> <p style="text-align: center;">v.</p> <p>THE REPUBLIC OF VENEZUELA.</p>	}	No. 16.
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REPLICATION ON BEHALF OF THE UNITED STATES.

In addition to objections involving the merits of this claim in general and specified items thereof in particular, the respondent Government has suggested three several reasons why this high Commission should not "admit" or "consider" the claim at all, which reasons or objections with change of order in which they appear in the answer may be stated as follows:

First. The damages, if any there have been, were not sustained by the claimant itself, but were sustained, if at all, by the claimant's assignor, The Orinoco Shipping and Trading Company (Limited), an English corporation. Therefore, such damages "have not been suffered by an American citizen, and consequently the reclamation is not within the terms established in the protocol." In connection with this objection, and as incidental to it, it is also objected that the fact that 99 per cent of the capital stock of said English corporation was owned at the time the damages accrued by American citizens is of no consequence "because the juridical personality of the stockholders has no effect on the juridical personality of the company, which has a separate moral entity."

Second. Because all clauses of the contract are "equally valid and obligatory," and the claimant should be required to conform to that provision of the contract which relegates all disputes arising between the parties to the Venezuelan courts, without recourse to diplomatic intervention.

Third. As the Venezuelan Government has claims of good origin against the company which she "can not substantiate before the Commission, which is without jurisdiction to determine them," and therefore she can not defend herself as she could before a court of law, * * * to hear and determine the claim of the company under such circumstances would be "in open opposition to the most simple prin-

ciples of equity;" and therefore the "Commission, proceeding in accordance with its fundamental rule, which is (that of the) strictest equity, should reject this claim."

These three objections are, so to speak, fundamental in character and general in scope. If either one of them be in law and truth well founded, the claim should be dismissed.

Objections first and second attack the jurisdiction of this Commission to hear and determine the merits of the claim at all. Objection number three, while seemingly admitting the existence of jurisdiction in the Commission to hear and determine the claim as presented by the United States, demands that it be dismissed because under the terms of the protocol the Commission is without jurisdiction to hear and determine by way of offset or counterclaim certain unliquidated and unascertained claims for damages on the part of the Government against the claimant and its assignor. Such claims appear never to have been thought of, and certainly not to have been asserted in writing or other form calculated to lend them permanency, until after the presentation of this case to this Commission.

We are confronted at the very threshold of the discussion, then, with the question of the jurisdiction of the Commission in the premises and it seems well in the discussion of it to follow the question as outlined in the first and second objections above.

JURISDICTION.

Article 1 of the protocol under which this tribunal has been organized and is acting provides that—

*All claims owned by citizens of the United States of America against the Republic of Venezuela * * * which shall have been presented to the Commission * * * by the Department of State of the United States or its legation at Caracas shall be examined and decided by a (the) mixed commission, which shall sit at Caracas. * * **

Before assuming the functions of their office, the commissions and the umpire shall take solemn oath carefully to examine and impartially to decide according to justice and the provisions of this convention *all claims submitted to them. * * ** The commissions, or in case of their disagreement, the umpire, shall decide *all* claims upon a basis of absolute equity without regard to objections of a technical nature or of the provisions of local legislation.

From the express words of the protocol, therefore, it appears that with respect to the jurisdictional power of this high Commission to hear and determine claims against the Republic of Venezuela, but two conditions are prescribed as prerequisites:

First. That the claim shall be *owned* (poseidas) by citizens of the United States of America; and

Second. That the claim shall have been *presented* to the Commission by the Department of State of the United States or its legation at Caracas.

Every claim so owned and presented the commissioners are, or in case of their disagreement the umpire is (article 2 of protocol), in duty bound carefully to examine and impartially to decide.

If, upon examination of any claim so presented to the Commission, and every claim presented by the agent of the United States must be conclusively presumed to have been presented "by the Department of State of the United States or its legation at Caracas," it shall appear that the claim is owned (poseidas) by a citizen of the United States, it would seem beyond dispute that the Commission was possessed of full

jurisdiction to hear the claim, consider the proofs, and adjudge the controversy.

The significance of the word "owned" is too well understood to render quotations of its definitions worth while, but no definition of it could be more apt than the primary definition given in *Neuvo Diccionario de la Lengua Castellana* of its treaty equivalent *poseidas* (poseer), viz: *Tener una cosa en su poder*—i. e., *Owned*, to hold in possession—no matter how acquired.

But it is said that these words of possession must be construed in accord with established principles of general international law, and as the general rule is that international claims must be national in origin as well as at the time of submission, the special words of possession used in this treaty must be held to include only such claims as were American in origin and not to include claims which, though not American in origin, have since in due course of business come by assignment or otherwise into the possession of American citizens.

This suggestion ignores entirely the fact that high contracting parties, sovereign in name and power, are possessed of the fullest liberty of contract, and that it is entirely competent for such parties by express agreement to waive or overrule as between themselves any or all general principles or technical rules of law.

There is no general prohibition of law, international or municipal, against the assignment of claims such as have, for instance, been submitted to this august tribunal for adjudication.

This subject was much discussed in Camy's case before the United States and French Mixed Commission under the convention of January 16, 1880. In that case it appeared from the memorial itself that the claimant Camy, a French subject, had assigned his interest in the claim to an American citizen, but for reasons best known to himself he asserted that the assignment was void, and that he was therefore entitled to urge the claim in his own behalf before the commission. The agent for the United States contended that the assignment was valid, and demurred to the claim. The demurrer was sustained, the commissioners in disposing of the matter saying:

The convention under which we act is silent upon the question whether the original claimant may or may not assign his claim to another. The commissions heretofore established by treaty between the United States and other powers for the settlement of such claims have recognized the right of the original claimant to transfer his claim to another. The rules of the British and American, the Mexican and the Spanish commissions recognize the right and require the transfer to be set forth in the memorial. The rules of this Commission also recognize the right. Several cases of awards to assignees may be found among the decisions of the British and American Claims Commission. We think the claim existed and vested in the claimant a right to relief and compensation when the acts of taking the cotton and converting it to the use of the United States were committed. True, there was no court or tribunal to which the claimant could present his claim and obtain judgment and compensation, but his moral right existed, and the establishment of this tribunal recognized it and gave him a legal remedy for his right because no other existed. * * * (3 Moore, Int. Arb., pp. 2398-2400.)

Conceding then the general rule with respect to national claims to be as contended for by the honorable agent for Venezuela, viz, that they must be national in origin as well as national at the time of submission to the arbitral tribunal, this rule, as was said in the case of Abbiatti against Venezuela (3 Moore, Int. Arb., p. 2347), is "subject of course to treaty terms."

In that case the commissioners agreed that in the absence of treaty terms to the contrary the touchstone of jurisdiction was whether the State seeking redress was the State that had been injured by a wrong done to one who at the time of the doing thereof was its own citizen.

A striking example of an exception from the general principle is found in the repeated rulings of the so-called Court of Alabama Claims, which was organized pursuant to the act of June 23, 1874 (United States of America), for the distribution of the so-called Geneva award.

The treaty upon which said award was founded recites that—

ART. 1. Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the Alabama claims; * * *

Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims which are not admitted by Her Britannic Majesty's Government, the high contracting parties agree that all the said claims * * * shall be referred to a tribunal of arbitration. * * *

ART. 7. * * * In case the tribunal find that Great Britain has failed to fulfill any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it. * * *

ART. 10. Provided that in case the tribunal found Great Britain to be in fault but did "not award a sum in gross," a board of assessors should be appointed to ascertain and determine "what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure;" and also that the members of said board "should impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, all matters submitted to them, and shall forthwith proceed * * * to the investigation of the claims which shall be presented to them by the Government of the United States."

The arbitrators having carefully examined the evidence and documents submitted by the respective parties for their consideration, "making use of the authority conferred upon it (them) by Article VII of the said treaty, awarded to the United States a sum of \$15,500,000 in gold, as the indemnity to be paid by Great Britain to the United States, *for the satisfaction of all of the claims referred to the consideration of the tribunal.*" (1 Moore, Int. Arb. pp. 658-659).

It thus appears that the award was made in full settlement of all the "claims on the part of the United States" referred, under the stipulations of the treaty, to the consideration of the arbitrators.

The amount so awarded in gross having come into the possession of the United States, the act of June 23, 1874 (above referred to), providing for the creation of a court to distribute the same, was enacted.

Section 12 of said act provided:

And no claim shall be admissible or allowed by said court, arising in favor of any person not entitled, at the time of his loss, to the protection of the United States in the premises.

But, notwithstanding the contention of the representatives of the United States to the contrary, the court held that the act rendered admissible the claims of all persons, native born or naturalized, and even unnaturalized, who were at the time of their loss or injury entitled, in respect of such loss or injury, to the protection of the flag of the United States on the high seas, excepting only British subjects, who were held to be excluded on the ground that they could not be entitled to the protection or intervention of the United States as against their own Government.

The learned judge, who prepared the leading opinion on the point, among other conclusions, declared that—

It was a great principle for which our Government had contended from its origin, a principle identified with the freedom of the seas, viz, that the flag protected the ship and *every person and thing* thereon not contraband. * * * Therefore, on the ground of abstract justice and propriety, and upon the ground of legal right, we decide that foreigners entitled to the protection of our flag in the premises, whether naturalized or not, have a right to share in the distribution of this fund.

The court passed upon a large number of claims in which the claimants were persons of foreign birth, not naturalized, and entered judgment in their favor whenever they showed a loss under the provisions of the act, except in the cases of native-born subjects of Great Britain. (3 Moore, Int. Arb., pp. 2350-2354.)

It is to be noted that these claims of aliens, which were allowed by that court, were the very claims which the United States submitted to and urged before the arbitrators appointed by and acting under the terms of the treaty between the United States and Great Britain, and were, in part, "the claims *on the part* of the United States" which the gross award of \$15,500,000 was intended to satisfy.

The case of the *Texan Star* is also instructive in this connection. The vessel was built in Boston, and in 1863 her managing owners were Stevens & Co., American citizens, who, on the breaking out of the war of the rebellion, transferred her to a British subject so as to prevent her capture by Confederate cruisers. On the transfer her name was changed to the *Montaban*, but she was left by her nominal vendees in the absolute charge and control of her former master. Having set out on her voyage she was captured, and, with her cargo, burned by the Confederate cruiser *Alabama*.

The counsel for the United States contended that the vessel having been sold to a British subject and put under the British flag, said vessel was British property, and, therefore, not being entitled to the protection of the United States *in the premises*, the claimants could not recover; but, after an elaborate review of precedents and authorities, it was held by the court that, notwithstanding the *Texan Star* was sailing under the English flag at the time of her capture and destruction, nevertheless, the American claimants—whether continuing to be the absolute owners of the ship in consequence of the invalidity of the fictitious sale, or whether as mortgagees in possession with unlimited authority, whether with or without any registration—owned property in the *Texan Star* (*Montaban*); that that property, notwithstanding the change of flag, was under the protection of the United States; that the property was lost from damage directly resulting from the act of the Confederate cruiser, and that, therefore, the claimants came within the provisions of the act providing for the distribution of the Geneva award. (3 Moore, Int. Arb., pp. 2360, 2379.)

It is very plain from this opinion that the court in determining its jurisdiction looked through the bill of sale and change of flag, and, seeing that, notwithstanding the apparent English ownership, the real ownership was American, and that America and American citizens had suffered the damage and wrong complained of, swept aside all technical difficulties that stood in the path of justice and awarded compensation where damage had been done.

The reason for the conceded rule that, in the absence of special provision to the contrary in the treaty or articles of convention, the

claim to merit consideration at the hands of an international commission must be national in origin, as well as at the time of its presentation to the Commission for adjudication, lies in that principle of public policy which forbids speculation in national claims and prevents the drumming up and purchase by citizens of a powerful state of claims against a foreign nation which have accrued to citizens of an unpotent state.

But, the reason for the rule being absent, the rule itself falls, and, even in the absence of a treaty stipulation to that effect, there would seem to be no room for its application in a case such as here at bar where the element of speculation is entirely wanting and the beneficial ownership of the claim at the time of origin and ever since has remained the same, for although the Orinoco Shipping and Trading Company, Limited, was a British corporation and the Orinoco Steamship Company is an American corporation, the owners of the respective companies, that is, the stockholders, were, with unimportant exceptions, the same in each. (Sworn Memorial, p. 4.) The beneficial interest in the company having been at all times American, any injury done the company or its properties was a direct injury to American citizens and consequently a wrong to the United States, which it was the purpose of the protocol and the parties to it to have righted.

The fact that at the date of the main wrongs complained of, the predecessor in interest of the present claimant was an English registered company is of no great moment, for there is respectable precedent for national intervention in behalf of national stockholders in a foreign corporation and of shareholders in a ship sailing under a foreign register and flag.

The Delagoa Bay Railway arbitration between the United States and Portugal is directly in point. (2 Moore Int. Arb., 1865 et seq.)

The facts of that case were as follows:

In 1883 Edward McMurdo obtained a concession from the Portuguese Government to construct and operate a railroad from Lourenço Marquez to the frontier of the Transvaal. It was stipulated in the concession that he should form a company for this purpose under the laws of Portugal, and such company, called the "Lourenço Marquez and Transvaal Railway Company," was organized in accordance therewith. In May, 1884, Colonel McMurdo assigned his concession to the Lourenço Marquez and Transvaal Railway Company, and received as consideration therefor 498,940 out of 500,000 shares of the stock of the said Portuguese company. By the same instrument Colonel McMurdo agreed to construct the railroad, in consideration of the transfer to him of the whole of the debenture bonds of the company, amounting to £425,000.

For several years McMurdo was unsuccessful in his efforts to float these bonds. Finally, in 1887, he obtained the assistance of English capitalists, who, however, stipulated that their interests should be represented by the bonds and shares of a company to be incorporated under English laws. In this way the Delagoa Bay and East African Railway was formed, with a capital of £500,000 in shares. McMurdo then assigned to this English company his shares in and bonds of the Portuguese company and the benefit of his contract with said Portuguese company of May, 1884, the English company undertaking to indemnify him in respect to the obligations of his contract to pay him £115,500 and to give him their entire issue of stock. The company

then issued debenture bonds to pay McMurdo and raise money to build the road.

In July, 1887, the Portuguese Government intimated that it would require an extension of the line of the railway. Meantime the railway was completed in accordance with the original plans and accepted by the Portuguese Government, with a reservation of the question as to the further extension of the line. Controversies over this extension lead to the confiscation of the road in June, 1889, by Portugal.

The first step of the United States toward intervention was taken May 9, 1889, when Mr. Blaine instructed Minister Lewis, at Lisbon, to send the Department all the documents relating to the McMurdo concession. On June 19, Mr. Blaine further instructed Mr. Lewis that it was reported that the Portuguese Government intended to take possession of the railway on the 24th of June, and he expressed the hope that no decisive action might be taken until the Government of the United States could investigate the case and make known any objections it might desire to express. At the same time he reserved all the rights of the United States in the matter. When it was reported that the concession had been canceled, Mr. Lewis was instructed to make a formal protest, reserving all rights the heirs of McMurdo, who had died meanwhile, or other American citizens might have in the concessions; and on October 12, 1889, Mr. Loring, who had succeeded Mr. Lewis as our minister at Lisbon, was directed to "inform Portuguese minister for foreign affairs that this Government, after careful investigation, views the forfeiture of Delagoa Railway concession and confiscation of the property of American citizens as unwarrantable and unjust, and that it will demand and expect the restoration of property or indemnity for losing, inflicted by Portuguese Government at the time of threatened forfeiture."

On November 8, 1889, in the course of a long instruction to Mr. Loring, reviewing the facts in the case, Secretary Blaine says:

Upon full consideration of the circumstances of the case, this Government is forced to the conclusion that the violent seizure of the railway by the Portuguese Government was an act of confiscation which renders it the duty of the Government of the United States to ask that compensation should be made to such citizens of this country as may be involved. * * * The Portuguese company being without remedy and having now practically ceased to exist, the only recourse of those whose property has been confiscated is the intervention of their respective Governments.

Independently of this action on the part of the United States, which it is to be noted was taken on behalf of an American stockholder in a Portuguese company, the British Government had also intervened on behalf of its citizens who were bondholders in the English corporation, the Delagoa Bay and East African Railway, the sole connection of the latter company with the controversy being as above stated, viz, that by transfer from McMurdo it had become the assignee or holding company of the shares in and bonds of the Portuguese company given to McMurdo in consideration of the construction of the railway.

On September 10, 1889, Lord Salisbury instructed Mr. Petre (the English representative in Portugal) that—

Her Majesty's Government are of opinion that the Portuguese Government had no right to cancel the concession nor to forfeit the line already constructed. They hold the action of the Portuguese Government to have been wrongful and to have violated the clear rights and injured the interests of the British company which was powerless to prevent it, and which, as the Portuguese company is practically defunct (this suggestion was vigorously denied by Senhor Barros Gomes, Portuguese

minister of foreign affairs), has no remedy except through the intervention of its own Government. In their judgment the British investors have suffered a grievous wrong in consequence of the forcible confiscation by the Portuguese Government of the line and the materials belonging to the British company and of the security on which the debentures of the British company had been advanced; and that for that wrong Her Majesty's Government are bound to ask for compensation from the Government of Portugal.

We thus have the case of both the United States and Great Britain asserting the propriety and exercising the right to intervene as against Portugal on behalf of their respective nationals, stockholders or bondholders in a Portuguese corporation. An agreement to arbitrate having been reached, the arbitrators were named by the President of the Swiss Republic, and after an exhaustive review of the matters connected with the claim recently rendered an award in favor of the claimants for a large sum.

An even more striking instance of national intervention on behalf of a national stockholder in a foreign corporation is to be found in the case of the claim of the Salvador Commercial Company, an American corporation, and other citizens of the United States, all being stockholders in the "El Triunfo Company (Limited)," a San Salvadorean corporation. This controversy had its origin in a scheme to establish and develop a new port on the Pacific coast of Central America in the Republic of Salvador.

In that case a concession for the navigation of the port in question had been granted to the Salvadorean corporation, 51 per cent of the stock of which was owned by the American corporation first above named. The concession having been arbitrarily withdrawn by the Salvadorean Government, the American citizens interested appealed to their Government for protection and reclamation. The Government of San Salvador denied the right of the Government of the United States to intervene in the matter, insisting that the Government could only deal with the claims of the San Salvador corporation which, as a citizen of that country, should seek its redress, if any it had, in the San Salvador courts. After prolonged diplomatic negotiations the entire matter was submitted to arbitration.

Before the arbitrators it was again asserted that the United States could not in that case make reclamations for its nationals, the shareholders in El Triunfo Company, for the reason that such citizens having invested their money in the Republic of San Salvador must abide by the laws of that country and seek their remedy, if any they have, in its courts, and that before reclamations can be successfully urged in their behalf by the United States it must be shown that such courts having been appealed to a denial of justice had resulted. While not denying the general proposition of law as thus stated, the commission (the umpire, Sir Henry Strong, and the American commission concurring) sustained the right of the United States to intervene under the circumstances on behalf of its nationals, mere stockholders though they were, and rendered an award in claimant's favor for a large sum. (A full copy of the decision of the commissioners in that case is submitted herewith; see also extract and remarks in relation thereto contained in brief on behalf of the United States heretofore filed herein.)

It thus appears that, even had there not been any transfer of rights from the English corporation, the Orinoco Shipping and Trading Company (Limited), to the American corporation, the Orinoco Steamship Company, it would still have been entirely competent and in

accord with established precedents for the United States to have intervened as against Venezuela and to have demanded on behalf of its nationals, although stockholders in an English company, compensation for losses and damages suffered by such nationals as the result of arbitrary interference with the company's business or its property by Venezuela.

A foundation for such action was in fact laid by the American diplomatic representative in Caracas, when, in conjunction with the English minister, he called upon the Venezuelan minister of foreign affairs, and, showing him the company's protest against the decree of October 5, 1900, opening the Macareo and Pedernales channels to free navigation, asked for a modification of it "in some way, as the carrying out of it would certainly very greatly injure the interests of company in question." (Dip. Cor., pp. 9-10.)

Another view of this subject is also interesting. There is in session at the present time in this capital in addition to the United States and Venezuelan Mixed Commission also a British and Venezuelan Mixed Commission. The former has jurisdiction of all claims owned by American citizens which shall have been presented to it for decision by the United States Department of State. The latter has jurisdiction of all British claims not otherwise settled that may be brought before it. As in any view one or the other of these commissions would have had jurisdiction to hear and determine such portion of this claim as accrued to the English company, it would seem to be a matter of small concern which one was called upon to decide it.

If it be true that Venezuela has arbitrarily destroyed property rights of the Orinoco Shipping and Trading Company (Limited) and thereby inflicted injuries upon that company, which, as necessarily follows, must ultimately fall upon its stockholders, who were American citizens, it would seem that the wrong that was done was always a wrong against the United States and its citizens.

The basis of intervention having been established, it is of small consequence either in principle or practice whether such intervention takes place on behalf of the individual stockholders who had been wronged or on behalf of a corporation to whom their rights whatever they were had been transferred.

On October 21, 1899, the Orinoco Shipping and Trading Company (Limited) invoked "the aid and protection of the American Government for the interests of American citizens involved therein" (Dip. Cor., p. 1), representing that 99 per cent of its capital stock was owned by Alfred B. Scott, J. Van Vechten Olcott, and R. Morgan Olcott, three American citizens. That this application for protection met with a prompt response and produced satisfactory results appears from the letter to the Secretary of State of the United States under date of June 19, 1900, forwarding copies of the papers pertaining to the settlement of May 10, 1900, and expressing the thanks of the company "for the good offices so promptly extended in its behalf." (Dip. Cor., p. 4.)

March 13, 1902, the United States Department of State was informed of the incorporation of the Orinoco Steamship Company, and also of the fact that on the 10th of the same month a resolution had been duly passed "authorizing the transfer of all of the property and assets of the Orinoco Shipping and Trading Company, to the Orinoco Steamship Company." (Dip. Cor., p. 58.)

September 15, 1902, Minister Bowen called the attention of the Venezuelan Government to the complaint of the "Orinoco Steamship Company," "an American corporation," that "its contract with the Venezuelan Government, by which it was guaranteed the exclusive navigation of the Macareo and Pedernales channels of the Orinoco," had been violated, and requested his excellency, the minister for foreign affairs, "to bring the case to the attention of your Government, to the end that the American company in question be fully protected in its rights." (Dip. Cor., pp. 96-97.)

Receipt of this communication was acknowledged by Señor Baralt, minister for foreign affairs, with an expression of the surprise "produced at the claim of the so-called *Orinoco Steamship Company*," and suggesting that "the claimants may have wished to refer to a question" theretofore raised by Mr. Bowen's predecessor, in course of which the Venezuelan Government "was asked to take into consideration the losses alleged to have been caused the claimants by the closing decree in question;" to which request the Venezuelan Government had replied stating "the legal and judicial circumstances which prevented the Government from admitting claims of that nature, and pointed out the remedy for all claimants for damages based on presumptive or effective titles," and reference was made to the correspondence in question Señor, Baralt stating that he reaffirmed "the position then taken by this ministry." (Dip. Cor., p. 98.)

The correspondence referred to appears on pages 138-140 of the diplomatic correspondence in this case, and, after referring to the damages sustained by the Orinoco Shipping and Trading Company as a result of the decree of October 5, 1900, disclaims any intention of discussing the principle of free navigation involved therein, but invites attention to matter for the purpose of considering "whether or not the American stockholders who own 90 per cent of the shares of this company are not likely to suffer losses, owing to the promulgation of this decree, that should in justice entitle them to adequate compensation at the hands of the Venezuelan Government." To this the then minister of foreign affairs, Señor Eduardo Blanco, replied, referring to the mention made "of a claim that is likely to be presented with the intervention of the United States Government," that the question presented "from its origin and nature, as it is a case of litigation, can not be investigated except in conformity to the provisions of internal legislation," and "in conformity to instructions from the Chief Executive, I have to respectfully inform your excellency that it is impossible to look at claims of that kind in the same manner as your excellency appears to do in the concluding part of your note." (Dip. Cor., pp. 139-140.)

It thus plainly appears that as early as January 29, 1901, the Venezuelan Government was advised through diplomatic channels of the existence of the claims against said Government in favor of the Orinoco Shipping and Trading Company and of the disposition of the United States to intervene in behalf of the American stockholders in said corporation, and later of the fact that the American corporation, the Orinoco Steamship Company, had taken over the assets of the former company, including the claims in question, and that the United States Government was still disposed to intervene in such behalf on account of the damages occasioned as aforesaid.

It can not, therefore, be reasonably argued that the two Governments, acting through their respective plenipotentiaries, when effecting the protocol under which this Commission is acting, were not fully cognizant of the existence and pendency of this very claim, or that they did not intend affirmatively by the word "owned" (*poseidas*), specially selected as it was—for its use in this protocol is unique—to cover this very case whose continued pendency unsettled was calculated to vex sorely both Governments. The purpose was undoubtedly to dispose forever of all outstanding differences between the countries, and the words used in the protocol to effect that end are so clear as to leave no room for construction.

The pendency of the claims in question was known by both Governments. That they had been transferred to and were consequently owned by the Orinoco Steamship Company, a citizen of the United States, was equally well known. Equally possessed of such knowledge, the high contracting parties agreed to submit to the determination of arbitrators "all claims owned by citizens of the United States." That the high contracting parties were competent to so stipulate must be admitted by every one who asserts that they possess the attributes of sovereignty. Having evidenced their agreement by the use of the most apt words to be found in the English and the Spanish languages to express the desired end, it would seem to be idle to attack the jurisdiction of this Commission by invoking a general principle which, while applicable where the treaty is silent, all agree must yield when the treaty by words specially selected speaks otherwise.

Second. But it is also said that as all clauses of the contract are equally obligatory, the claimant should be required to conform to that provision of the contract which relegates all disputes between the parties to the Venezuelan courts without recourse to diplomatic intervention.

Article 14 of the contract of navigation, which is undoubtedly referred to in this connection, provides (Memorial, p. 4) that "Disputes and controversies which may arise *with regard to the interpretation or execution* of this contract shall be resolved by the tribunals of the Republic in accordance with the laws of the nation, and shall not in any case be considered as a motive for international reclamations.

It is to be remarked in the first place that no dispute has arisen between the parties concerning either the *interpretation* or *execution* of said contract. The Venezuelan Government having seen fit, by its decree of October 5, 1900, to put an end to the entire value of the concession by granting to other steamers plying between Trinidad and Ciudad Bolivar the right to ply through the Macareo and Pedernales channels, contrary, as we assert, to the provisions of article 6 of the contract by which the Government undertook to concede to no other line of steamers "any of the benefits, concessions, and exemptions contained in the present contract," a claim arose in favor of the parties interested for the destruction of the property rights embodied in the contract. The Government, having in fact annulled the concession by destroying its only value, could not reasonably assert that it was still in force either for the purpose of availing itself of the stipulations in its favor therein contained, or for any purpose whatever.

Besides, the high contracting powers having agreed to submit this claim together with others arising out of contracts containing a similar clause to this Commission for adjudication, it is idle for the agent of

Venezuela to dispute the express terms of the protocol which, ad hoc, is the supreme law of the land.

This claim having been submitted to the Commission for adjudication, the protocol declares that it shall be decided "without regard to objections of a technical nature or of the provisions of local legislation."

To oppose the jurisdiction of this Commission to assess and award to the claimant compensation for services rendered to the Government and for damages suffered at the hands of the Government by its capricious destruction of the property value of the concession because the contract of concession under which the company was acting contained a provision that all disputes arising out of its *interpretation* or *execution* should be referred to local tribunals, would seem to be nothing more than to submit for the consideration of the Commission a mere technical objection.

Considering the terms of the protocol, it would seem impossible to question the jurisdiction of the Commission on this ground. It is well settled that—

When citizens of the United States go to a foreign country, they go with an implied understanding that they are to obey its laws and submit themselves in good faith to its established tribunals. When they do business with its citizens, or make private contracts there, it is not to be expected that either their own or the foreign government is to be made a party to this business or these contracts, or will undertake to determine any dispute to which they give rise. * * * The case is widely different when the foreign government becomes itself a party to important contracts, and then not only fails to fulfill them, but capriciously annuls them, to the great loss of those who have invested their time, labor, and capital in their reliance upon its good faith and justice. (Mr. Cass, Secretary of State, to Mr. Dimitry, May 3, 1860; 2 Wharton's Digest, sec. 230, p. 615.)

But—

in any case, by the rule of natural justice obtaining universally throughout the world, wherever a legal system exists, the obligation of parties to a contract to appeal for judicial relief is reciprocal. If the Republic of Salvador, a party to the contract which involved the franchise to El Triunfo Company, had just ground for complaint that under its organic law the grantees had, by misuser or nonuser of the franchise granted, brought upon themselves the penalty of forfeiture of their rights under it, then the course of that Government should have been to have itself appealed to the courts against the company and there, by the due process of judicial proceedings, involving notice, full opportunity to be heard, consideration, and solemn judgment, have invoked and secured the remedy sought.

It is abhorrent to the sense of justice to say that one party to a contract, whether such party be a private individual, a monarch, or a government of any kind, may arbitrarily without hearing, and without impartial procedure of any sort, arrogate the right to condemn the other party to the contract, to pass judgment upon him and his acts, and to impose upon him the extreme penalty of forfeiture of all his rights under it, including his property and his investment of capital made on the faith of that contract.

Before the arbitrament of natural justice all parties to a contract as to their reciprocal rights and their reciprocal remedies are of equal dignity and are equally entitled to invoke for their redress and for their defense the hearing and the judgment of an impartial and disinterested tribunal. (Opinion of umpire, Sir Henry Strong, and Commissioner Dickinson in El Triunfo Company, Ltd., case.)

Assuming for the moment, as seems to be the contention of the agent for the respondent Government, that clause 14 of the contract of June 8, 1894, had a bearing upon the matters in controversy between Venezuela and the company, it must be apparent that the obligations of that clause bore equally and reciprocally upon both parties thereto, and when Venezuela without resort to the tribunals of the Republic destroyed the value of the concession by the decree of

October 5, 1900, and further showed her own disregard of the requirement in question which had been repeated in the settlement agreement of May 10, 1900, by proclaiming on December 14, 1901, the forfeiture and annulment of the extension itself, it is certain that the company, the other party to the contract, was thereby absolved from all obligation if any had theretofore existed on such score.

In any event Venezuela was competent to waive the restrictive clause referred to and to submit the disputed matters to the judgment of an independent tribunal, and this she has done beyond cavil.

Third. It is further objected that it would be inequitable for this international tribunal to consider the claim of the claimant company and to render an award in its favor, because the respondent government has claims of good origin *to make* against the claimant which she can not substantiate before the Commission.

It is to be noticed that it is not asserted that the respondent is in possession of any liquidated claim against the company which it desires to urge by way of a set-off. If such liquidated claim actually existed it would not be contended for one instant that under the general principles governing submissions to arbitration for settlement in accordance with equity it could not be urged by way of set-off or counterclaim, for to determine a claim according to equity and justice would be but to award in favor of the claimant what was actually his due, and it could not be contended that there was in such case actually due more than the difference between the claim and the offset. But here it is to be noted that Venezuela sets up a mere unliquidated demand which upon investigation may be found, as it doubtless will be, to be without any foundation either in fact or law. And it is particularly to be noted in this connection that never during the negotiations resulting in the settlement of May 10, 1900, nor at any time subsequent thereto until after the presentation of the claimant company's claim to this tribunal was it ever intimated that the respondent Government possessed counterclaims against the company. The afterthought comes too late, and, if this Commission should give heed to it, it is easily to be perceived that by resorting to a similar plea in other cases presented on behalf of American citizens the Commission would readily be stripped of all its functions under the protocol. If the counterclaim or offset now asserted for the first time had in fact existed, it should have been suggested at least not later than during the negotiations which resulted in the protocol and it can not be doubted that ample provision would have been made therein for its consideration and adjustment.

It is certain, however, that the Commission should not refuse to consider and decide the claim which it has jurisdiction of because it can not take into account a possible offset which has no existence in fact.

Fourth. With respect to the item of 100,000 bolivars, due as the second installment of cash agreed to be paid under the terms of the settlement of May 10, 1900, it is urged on behalf of Venezuela that same should be rejected, because—

(a) A new creditor has been substituted for the former one without the consent of or notice to the debtor;

(b) Because Venezuela has the right and should be afforded the opportunity to offset against the same amounts which the original debtor owes to her; and

(c) Because by the terms of the contract itself, the concessionary

company agreed that "every question that might arise by reason of that agreement should be submitted to the tribunals of Venezuela for decision and could never be open to international reclamations."

Referring to the last of these objections first, it is but necessary to call attention to the fact that the clause of the settlement contract referred to is not so broad as is there stated, but that the agreement for submission to the Venezuelan courts is strictly limited to "doubts and controversies which may arise with respect to the *interpretation and execution* of this contract." And it would seem that in no fair or equitable sense has any controversy arisen either with respect to such "interpretation or execution" of the contract, but, on the contrary, it being conceded that the sum mentioned is due by the express terms of the settlement contract, it is sought to avoid payment thereof by asserting an offset or counterclaim which in law was finally settled by the "transaction" itself, and which, at least in liquidated form, has never had any existence in fact.

The agreement of settlement was executed May 10, 1900. On July 14, 1901, Mr. Russell reported to Mr. Hay that he "had a long interview with the foreign minister on this subject—i. e., the payment of the second installment of 100,000 bolivars—and he admitted that the whole of the 200,000 bolivars had to be paid in gold, and the only reason that Mr. Olcott's name appeared as one of the claimants before the late claims commission was that, in accordance with article 2 of the contract, the Commission has to fix the date for paying the second 100,000 bolivars." (Dip. Cor., p. 36.)

And again, on July 31, 1901, Mr. Russell cabled the Secretary of State at Washington that the "Government of Venezuela made the proposal to pay (one) thousand bolivars a month." (Ibid., p. 38.)

From this it is plain that as late as the last-mentioned date (July 31, 1901) no thought of the existence of a set-off had arisen in the minds of the executive officials of the respondent Government, nor had there been any suggestion that the above amount was not wholly due and payable.

Nor does it seem necessary to answer objection *b* further than to refer to the argument heretofore submitted under point No. 3. With respect to objection *a*, it would seem that the agent for Venezuela must have had in mind some provision of local legislation, regard for which is expressly excluded by the terms of the protocol. As the item is a liquidated one, and the right to recover it had vested, it would seem by all principles of recognized commercial dealing to have been assignable, and was so at least under the peculiar circumstances governing the relation of the assignor and assignee in this case.

All that Venezuela can care for or reasonably demand in respect to such item is that she shall be sure that a payment to the claimant of such amount under the award of this Commission will operate as an acquittance with respect to any and all other claimants whatsoever, and of this there can be no well-founded or reasonable doubt, for by the articles of assignment from the Orinoco Shipping and Trading Company, Limited, to the claimant, set forth as Exhibit C (memorial, p. 51), the former company would ever be estopped from asserting any claim, and the receipt of claimant, or his assigns if any, would be a full acquittance.

With respect to the objections made to the claim for damages resulting from the effects of the decree of October 5, 1900, it seems well for the

purpose of avoiding certain misapprehensions which seem to have fastened themselves in the mind of the honorable agent for Venezuela to review briefly the legislative history of recent years concerning the navigation of the Orinoco River, and also to analyze the terms of the company's concession and the claims now asserted for its breach.

In the first place, the claimant wishes it to be clearly understood that neither it nor its predecessors in interest at any time have laid claim to a grant of the exclusive navigation of the Orinoco River.

An inspection of any good map of Venezuela will disclose the fact that the vast volume of water forming the Orinoco River is discharged into the sea through several mouths, certain of which, particularly the Boca Grande, debouch directly into the Atlantic Ocean, while certain of the lesser mouths, and particularly what are known as the Macareo and Pedernales channels or mouths, debouch into the inland sea called the Gulf of Paria. Of the many mouths flowing into the Gulf of Paria only the two last above named are at all practicable for steam-boats of any reasonable capacity. While the Boca Grande is navigable at all seasons of the year by ocean-going craft, during the dry season the water in the river itself, and particularly between San Felix and Bolivar, becomes so low as to render the navigation of the river by such craft dangerous if not quite impossible. It is, therefore, apparent that navigation of the river by boats capable of plying through the Boca Grande might, and in fact would, be interrupted at certain seasons of the year because of low river; nevertheless, smaller boats of light draft, though incapable of navigating the Boca Grande and its sea approaches if entrance by the river be had otherwise, could find therein sufficient water to enable them to navigate all the year round. The protected waters of the Gulf of Paria in combination with the Macareo and Pedernales channels or mouths afford just such an opportunity.

In addition to the above it will also be noted that these mouths or channels afford the shortest route for communication between Port of Spain, Trinidad, and the city of Ciudad Bolivar.

The value of the right to navigate such channels or mouths has long been recognized. On May 14, 1869, the Congress of Venezuela threw "open to merchant steam vessels under foreign flags that undertake the inland navigation, the navigation of the river Orinoco and its affluents." The Venezuela Steam Transportation Company, an American corporation, built and equipped three steamers with special reference to the navigation of these inland waters, and dispatched them in sections to Venezuela where they were put together and began service. The subsequent history of that venture is not important here, but may be found in the report of the case of the Venezuela Steam Transportation Company, in 2 Moore's Int. Arb., p. 1693, et seq.

Subsequently, in November, 1892, Mr. Scruggs, then United States minister to Venezuela, sent to the minister of foreign affairs copy of a letter from John H. Dialogue & Son, of Camden, N. J., stating that they were contemplating the building of vessels with which to navigate the bayous of the Orinoco River, but before entering upon such expense they desired to know whether "these bayous as well as the main channel were open to all flags, and especially the American, and whether the condition would likely be permanent," to which Doctor Rojas, then minister for foreign affairs, replied to the effect that foreign vessels bound for Ciudad Bolivar were permitted to enter the

Orinoco River by any of the mouths and return likewise by any of them. This assurance, such as it was, having been communicated through the Department of State, at Washington, to Dialogue & Son, they set about constructing a vessel "especially for the navigation of the Orinoco River through the mouths adjacent to Port of Spain," but unfitted for navigating through the principal mouth. (Foreign Relations of the U. S., 1893, p. 737; also Foreign Relations U. S., 1894.)

Before the vessel was fully completed, on July 1, 1893, President Crespo decreed that—

Vessels engaged in foreign trade with Ciudad Bolivar shall be allowed to proceed only by way of the Boca Grande of the River Orinoco; the Macareo and Pedernales channels being reserved for the coastal service; navigation by the other channels of the said river being absolutely prohibited—

together with other matters not here important, and this decree was subsequently ratified and confirmed by the Congress of Venezuela. (Memorial, pp. 6, 7.)

The validity of such decree was also subsequently affirmed by the high federal court of Venezuela in the matter of George F. Carpenter, copy of translations of the opinion of the special commission and the sentence of the court in that connection being submitted herewith.

The free navigation of the Macareo and Pedernales channels having thus been prohibited by law, President Crespo on the 17th of January, 1894, for the various considerations therein recited, entered into the contract for the navigation of those channels which lie at the basis of the present claim, the contract itself as subsequently approved by the Venezuelan Congress being spread at large in the memorial at pages 8 to 11, inclusive.

By article 1 of said contract, the concessionaire undertook to establish and maintain "navigation by steamers between Ciudad Bolivar and Maracaibo * * * in such manner that at least one journey per fortnight be made, touching, etc. * * *"

By article 3 of the contract, the concessionaire agreed to transport, free of charge, the mails, and by article 5 to receive on board of each steamer a government employee to look after the same, and also to transport at reduced rates public employees, military men, troops, materials of war, and freights shipped for account or by order of the National Government.

By article 7, the Government of Venezuela bound itself to pay to the contractor (concessionaire) a monthly subsidy of 4,000 bolivars "so long as the conditions of the present contract are duly carried out," and by articles 8, 9, 10, and 11, the company was exonerated from payment of import duties on all machinery, etc., imported for the use of the steamers; was permitted to cut wood from the national forests for construction purposes and fuel; the officers and crews of the steamers were exempted from military service, and the steamers were granted in the ports of the Republic the freedom and preferences by law established and "enjoyed by steamers of lines established with fixed itinerary."

By article 12 it was provided that "any one of the steamers leaving Trinidad may also navigate by the channels of the Macareo and Pedernales of the River Orinoco in conformity with the formalities which by special resolution may be imposed by the minister of finance in order to prevent contraband," and by article 6 the Government bound

itself not to concede to any "other line of steamers any of the benefits, concessions, and exemptions contained in the present contract (which are granted) as compensation for the services which the company undertakes to render."

By article 13 it was provided that the contract should remain in force for fifteen years from the date of its approbation.

It will appear, therefore, that all in the way of a monopoly of navigation which the concessionaire or so-called contractor was entitled to claim, and all in that respect that the claimant company has in fact ever claimed, was the exclusive right of navigation of the Macareo and Pedernales channels by vessels engaged in foreign trade—that is, plying between Trinidad and the Orinoco River ports.

As Trinidad was at the date of the grant and ever since has continued to be a port of transshipment for foreign freights bound from or consigned to Bolivar and other Orinoco River ports, the great value of such an exclusive right is at once apparent.

As required by the terms of the contract, the concessionaire established, and his assigns maintained until broken by superior force, a line of steamers between Ciudad Bolivar and La Guaira, the journey both ways being made via Port of Spain, Trinidad.

The service from La Guaira to Maracaibo has never been established, the Government, after twice extending the time for the establishment of such service (memorial, pp. 13, 14), on May 10, 1900, expressly exempted the concessionaire from the obligation to establish the same, and the company on its part renounced its right to receive the subsidy of 4,000 bolivars per month stipulated to be paid by article 7 of the contract (mem., p. 22), which subsidy never had been paid and on account of which no claim has ever been urged by the company. (Dip. Cor., p. 29.)

Between Trinidad and Ciudad Bolivar the company established and always maintained the required service of fortnightly trips until about May 31, 1902, when the company's steamer *Bolivar*, while on her regular itinerary was stopped in the neighborhood of San Felix by national authority (J. Sarria Hurtado, president of State of Guayana), and after her cargo had been broached in part and other stores and supplies and sacks of mail had been taken from her, she was ordered to return to Trinidad with an order addressed to the general manager of the Orinoco Steamship Company in the following terms:

CONSTITUCIONAL PREDENCIA IN CAMPAIGN, STATE OF BOLIVAR,
San Felix, 31st May, 1902.

Ciudad Bolivar, capital of this State, being occupied by revolutionary troops, in arms against the constitutional government of the nation, I have been compelled to transfer the seat of government in accordance with the express dispositions of the constitution, to this town; and I notify you thereof in order that, from now onward, and until public peace shall have been reestablished, you abstain from dispatching the steamers at your command for said port of Bolivar, occupied by the enemy, as I shall be otherwise forcibly compelled to impede the said steamers proceeding to their destination.

God and the federation.

J. SARRIA HURTADO.

(Dip. Cor., 83.)

Against this order to cease dispatching steamers to Bolivar, the general manager of the company, Mr. Turner, on June 6, 1902, protested before the American consul in Trinidad, expressly calling attention therein to the fact that—

My company is bound by contract with the Venezuelan Government to maintain a fortnightly mail service between Trinidad and the aforesaid port of Ciudad Bolívar; and the prohibition above mentioned prevents the company from carrying out that contract, and exposes the company to other serious consequences. * * *

Under the circumstances enumerated, I desire on behalf of my company that you will have the goodness to communicate by cable with your Government at Washington, with a view of their affording such protection for the rights, contracts, and interests of the Orinoco Steamship Company as they may consider justifiable. (Dip. Cor., 88-89.)

Repeated applications for clearances of the company's vessels for Bolívar having been refused by the Venezuelan consul in Trinidad, the matter was on August 29, 1902, brought to the attention of the Secretary of State of the United States (August 29, 1902, Dip. Cor., 90; September 22, 1902, Dip. Cor., 99; and December 8, 1902, Dip. Cor., 100), who from time to time communicated through the legation in Caracas with the Venezuelan Government on the subject without avail.

As from the 31st of May, 1902, to the 21st day of July, 1903, Ciudad Bolívar has continuously remained in the hands of the revolutionary troops, and the Venezuelan consul in Trinidad has steadfastly refused clearances for the company's vessels bound for Orinoco ports, and as the general navigation of the river has from time to time throughout the intervening period been interrupted by blockades, both domestic and foreign, and by prohibitory decrees backed with at least a desultory show of force, it would seem that any and all failures to maintain a regular fortnightly service since said 31st day of May, 1902, must be passed without penalty, even if since said date the company was under any obligation to the Venezuelan Government, contractual or otherwise, to maintain such service, it being here suggested that the decree of the Supreme Chief of the Republic of October 5, 1900, which was subsequently ratified and confirmed on the 14th day of March, 1901, by the Venezuelan Congress, destroying as it did the company's exclusive rights of navigation in the Macareo and Federales channels, at the same time absolved the company itself from all necessity of compliance on its part with the contract terms.

With respect to so much of the contract as required navigation to be regularly maintained between the Orinoco River and La Guaira (the service to Maracaibo being dropped, as above stated), it is to be noted that the company also performed its duty in that respect, as the records of the Venezuelan customs-house at La Guaira will show, until October 19, 1899, on which date the company's steamer *Vencedor*, with which that service was being performed, was seized at the port of Porlamar by "men armed with Winchester and Mauser rifles," who boarded the vessel, "declaring that they took the steamer for the purpose of placing it at the service of the revolution, which was then in course of development in Venezuela, headed by Gen. Cipriano Castro." The steamer was then dispatched by Gen. Asuncion Rodriguez, the chief of the then revolutionary party in Margarita, to Carupano, where she was used by General Castro's adherents as a transport ship for carrying troops and supplies. (See protest of Jose Vicente Rodriguez, made October 30, 1899, at Port of Spain, copies of which are submitted herewith, marked "Exhibit A.")

The vessel was retained in the possession of the forces of General Castro until February 10, 1900—a period of one hundred and fourteen

days—when she was restored to the possession of the company in a badly damaged condition. (Dip. Cor., p. 117.)

The action of the revolutionists in seizing and making use of this vessel was approved by General Castro himself, as was evidenced by the settlement made between Mr. Olcott and the minister of the interior May 10, 1900 (Memorial, p. 1900), one of the main items of the company's claims then presented and settled covering the detention of and damage to this steamer.

As a circumstance connecting the two official papers which covered the transaction of May 10, 1900, it is to be noted that at the time it was estimated that it would require one year to repair the steamer (Dip. Cor., 117); and by article 2 of the paper providing for the six years' extension of the contract of navigation the company was allowed twelve months from its date within which to renew or "undertake" to make the "twelve voyages annually between the island of Trinidad and La Guaira, touching at the Venezuelan ports according to the itinerary of the east coast." The evident expectation of the parties at that time was that the service would be renewed with the same steamer that had formerly performed it, and a year's time was permitted to the concessionary company within which to make her necessary repairs.

It is insisted, therefore, that not only by the express terms of the navigation contract of June 8, 1894, did the concessionaire and his transferees obtain the exclusive right of navigation of the Macareo and Pedernales channels by vessels engaged in foreign commerce, but also that until prevented by vis majeure exercised by, or on behalf of the present existing Government of Venezuela, it fully complied with every obligation imposed upon it by the contract concession in question.

The suggestion that the contract concession amounted merely to a *permit* to navigate said channels, and did not constitute a grant of such right exclusive of all competition on the part of other ships engaged in foreign trade, seems to require no further comment or answer than a reference to the document itself, whose terms, rightly construed, must put an end to all discussion on such score.

Points 5 and 7 of the answer of the respondent Government, which consider the relation or want of it between the two separate documents which claimant contends taken together constitute the transaction of May 10, 1900, may well be considered together.

It is first suggested by the respondent that the extension of the navigation contract did not figure in the settlement of the claims in any manner, because it is not referred to in the document in which the claims are mentioned, nor can the two papers be bound together by the simple statement of one of the interested parties.

Second, that no allowance should be made for the withdrawal of so much of the concession as was covered by this six years' extension, because the same having been made without consideration given therefor did not constitute a binding contract and was capable of being withdrawn by the grantor at any time.

While it may be true that in a court of law administering justice according to hard and fast rules and adhering strictly to the prescribed rules of evidence there might be some difficulty in directly connecting the two instruments in question as constituting a single transaction, it is to be borne in mind that this high international tribunal is charged to decide all claims presented to it according to justice, upon a basis

of absolute equity, and without regard to objections of a technical nature.

With a view of determining the objection so raised in connection with the suggestion made on behalf of the respondent Government to the effect that the claimant's predecessor on May 10, 1900, agreed to settle and discharge accrued claims amounting to over \$550,000 American money, in consideration of the receipt of 100,000 bolivars in cash and a promise to pay 100,000 bolivars more thereafter, without any other consideration passing, let us examine the situation of both parties as it existed at the time of the transaction.

On June 1, 1899, bills and corresponding vouchers had been presented by the Orinoco Shipping and Trading Company, Limited, to the Venezuelan Government, covering services rendered by the "Red Star Line," then owned by the former company, amounting to \$101,163.42. These bills and vouchers were accepted by the Venezuelan Government as correct, and payments were made on account thereof as follows:

	Bolivars.
June 2, 1899.....	4, 000
August 24, 1899.....	4, 000
September 26, 1899.....	6, 000
October 6, 1899, \$20,400 in salt bonds.	

Amounting in the whole to about \$22,800 paid on account, and leaving then due to the company a balance of about \$77,818.01 of undisputed and indisputable debt (See Memorial, p. 17; Dip. Cor., p. 111-112, and affidavit of Cesar Vicentini made at Port of Spain May 20, 1903.)

Subsequent to the dates covered by the above-mentioned account, other services had been rendered by the company to the Government and other sums had on account thereof and on other accounts, such as the seizure and use of company's ships by the Government and damages done thereto, accrued due to the company, the whole including the balance above mentioned, amounting to more than a half of a million dollars.

The company, as was natural, was pressing for payment. General Castro's government, but newly come into power, was but illy supplied with cash funds. The company believed that its concession of the monopoly of navigating the interior waterways of the Orinoco River was valuable, and with approaching peace would become more so. The Government, although poorly supplied with cash, had the power to extend this concession, and the company was willing to accept such an extension in lieu of cash payment.

Is it to be presumed for one instant that with an acknowledged balance of at least \$77,800 in round numbers due and owing to the company on the first account above referred to that any sane man would have agreed to settle even with a slow-paying debtor for \$20,000 cash and a promise to pay \$20,000 at some indefinite time in the future? Why should the Government at the very time that a settlement of the claims on such terms was made agree to extend a monopoly of navigation held by its creditor unless the extension was to go in part payment? It is to be noted that both papers were drawn in the ministry of internal affairs on the same day, that the negotiators were the same in each, that in addition to considering settled all back debts due from the Government to the company it was agreed by the agent for the company in the "transaction" document to also consider as paid "all

services which the company *may continue to render* to the General Government or to the governments of the States up to the 1st of July next."

In the "extension" document it is recited that "Richard Morgan Olcott, attorney and director of the Orinoco Shipping and Trading Company, Limited, having solicited from the National Government an extension of six years of the contract of navigation dated 10th of June, 1894, * * * the Supreme Chief of the Republic, *considering the reasons on which said company bases its petition to be justified*, disposes as follows, etc." It is always open to parties to a contract to show by extraneous evidence the true consideration upon which a contract was founded.

In the sworn memorial it is stated by Mr. Olcott, one of the parties to the transaction itself, that—

It was agreed that in full settlement of the claims then accrued, due, and submitted, amounting, as aforesaid, to the sum of \$554,550.51, there should be paid to the Orinoco Shipping and Trading Company (Limited) the sum of 200,000 bolivars in coined money, and the above-mentioned contract or concession of the exclusive right to navigate the Macareo and Pedernales channels of the Orinoco River should be prolonged for the period of six years. * * * (Memorial, p. 19.)

Mr. Cesar Vicentini deposes that—

Richard Morgan Olcott, managing director, etc., together with myself, presented to the Government of the United States of Venezuela a statement of account, with vouchers corresponding thereto, showing the sum of \$554,550.53 due from the said Government to said Orinoco Shipping and Trading Company (Limited).

That said accounts were adjusted with the said Government *in my presence* on the 10th day of May, 1900, and the said Government agreed to pay to the said company the sum of 200,000 bolivars in coined money, * * * and, *in addition to these*, the said Government, in consideration and further settlement of the above-mentioned account, did grant to the said company a confirmation of the Macareo and Pedernales rivers concession, and extended and prolonged said concession for a period of six years, * * * etc. (See affidavit heretofore submitted.)

On June 19, 1900, copies of the articles of settlement were filed in the United States State Department. (See Dip. Cor., p. 3-4.)

October 21, 1900, Mr. Russell reported to the Department of State of the United States "that by an executive decree of the 5th of this month all of the mouths of the Orinoco River have been opened up to navigation." * * *

On the 6th of October, the day after the passage of the decree, the representative of the Orinoco Shipping and Trading Company came to me with a protest against the passage of such a decree as being a direct attack against the rights of his company and a virtual annulment of the contract under which said company is at present operating. A similar protest was made to the English legation, as the company is registered in London, and some of the stockholders are English. * * * In company with the English minister I made an informal call on the minister of foreign affairs. * * * The minister promised to look into the matter, but up to the present I have heard nothing more from him. * * * Some time ago the Orinoco Shipping and Trading Company presented a claim for the loss of two of its ships that had been destroyed while on Government service. This claim was settled last May, when the Government paid 100,000 bolivars in cash and agreed to pay 100,000 bolivars more when the Commission shall meet next January which is to consider claims for damages resulting from the last revolution; and as a further compensation extended the navigation contract of 1894 six years, which contract contained the special privilege of entering the Macareo and Pedernales channels. (Dip. Cor., p. 10-11.)

February 22, 1901, Minister Loomis again reported to the Department of State that—

There is no doubt, however, that the Venezuelan Government is largely in the debt of the company in a financial way, as the result of losses inflicted upon its prop-

erty and the interruption of its business by the arbitrary seizure of steamers from time to time. * * *

In making this arrangement the claim of the company for a hundred thousand or more dollars was scaled down by consent to forty thousand dollars *in consideration of the fact that its concession should be extended for six years*. The extension of the concession was thought to be of very great value. A few months after the extension was granted the value of the whole contract was destroyed by the opening of the Macareo channel to navigation. This was done without prior notice to the company. * * * (Dip. Cor., p. 23-24.)

December 14, 1900, Mr. Olcott wrote to the British minister resident in Caracas that—

On May 10, 1900, I concluded an arrangement with the Venezuelan Government for the settlement of our claims, which amounted to over £90,000. The Government agreed to satisfy that amount in the following manner:

1. Cash, 100,000 bolivars, received May 10 last. * * * *
3. The prolongation for six years of the contract of the 8th of June, 1894. * * *

When agreeing to the above settlement, I took into account almost entirely the value of the extension for six years, which the minister intrusted with these negotiations frequently stated in conversation (before my agent here, Mr. C. Vicentini) was "to the value of at least £100,000 alone." (Dip. Cor., p. 43.)

Thus the contemporaneous writings on the subject of this settlement, and the understanding of the diplomatic representatives of the United States seem to be in thorough accord as to the fact that the extension for six years was expressly made in part payment of the large claims which the company held and was pressing against the Government at the time, and the surrounding circumstances but corroborate such understanding.

In view of this state of facts, the suggestion that the extension was without consideration, a mere gratuity, and consequently to be withdrawn at the caprice of the Government, without thereby incurring any obligation to make reparation for the damages occasioned by such annulment of a valuable property right, would seem to require no further discussion.

That the settlement of May 10, 1900, as evidenced by the two papers in question, was made by competent parties, seems not to be denied by the honorable agent for Venezuela, nor indeed could the contrary be maintained. At the date of the transaction General Castro was dictator, holding in his hands the entire governmental power of the Republic. The "transaction" in question, made with the minister of the interior, recites that it was made by the authority of "the Supreme Chief of the Republic." The decree of October 5, 1900, which annulled the decree of July 1, 1893, prohibiting "the free navigation of the Macareo, Pedernales, and other navigable waterways of the River Orinoco," was promulgated by authority of "Cipriano Castro, general in chief of the army of Venezuela and Supreme Chief of the Republic."

At the session of the first National Congress held thereafter, it was declared that—

(1) The Citizen General Cipriano Castro, Chief and Supreme Director of the Liberal Repairing-Revolution, deserves the gratitude of the country.

(2) The Citizen General Cipriano Castro, as Supreme Chief of the Nation, is creditor of public confidence.

And it was decreed—

(1) To grant, as it hereby does, its solemn approval of all and each of the acts that he has executed as Supreme Chief of the Liberal Repairing-Revolution, as well as Supreme Chief of the National Executive.

(2) This resolution, signed by all the members of the National Constituent Congress, shall be presented to the honorable General Cipriano Castro by a special commission.

(Issued in the Legislative Federal Palace at Caracas, on the 6th of March, 1901, ninetieth year of independence and forty-third from the federation. Official Gazette of March 14, 1901.)

The transaction, including, as it did, the extension of the contract of navigation, thus received the confirmation and approval of the National Congress, as did also the subsequent opening up of the prohibited waterways to free navigation.

As bearing in a secondary manner upon the relative rights of the parties to the navigation contract, and also to the transaction of May 10, 1900, reference is respectfully made to the law of Venezuela relating to such matters, which, while stripped of binding force by the terms of the protocol covering submission to this tribunal, nevertheless, may at least be referred to as evidencing the duty of Venezuela in such respect.

By Title IV, section 1, paragraph 3, of the Venezuelan civil code of 1896, it is provided as follows:

ART. 1097. Contracts legally framed have the force of law between the parties. They can not be revoked except by mutual consent, or for the causes authorized by law.

ART. 1098. Contracts must be executed in good faith and bind not only to the fulfillment of what is expressed therein, but also to all the consequences that flow from the contracts themselves, according to equity, usage, or law.

ART. 1099. In contracts which have for object the transfer of property or some other right, the property or right is transferred as a consequence of the consent legitimately manifested, and the subject of transfer remains at the risk and danger of the acquiring party, although the conveyance should not have been effected.

* * * * *
ART. 1101. It is presumed that every one has contracted for himself and for his heirs and assigns, when the contrary has not been expressly agreed, or when it does not so result from the nature of the contract.

What more concise statement of mutual rights and obligations of parties to bilateral contracts could be found in the legislation of any nation, or in the principles of international law than is here expressed?

And further, with respect to the rescission of bilateral contracts in the event of default of one or the other of the parties it is declared by article 1131 that—

The rescissory condition is always implied in bilateral contracts in the event that one of the contracting parties should not comply with his obligation.

In this event the contract is not dissolved by the default itself (*de pleno derecho*). The party in respect to whom the obligation has not been fulfilled has the choice either to compel the other party to carry out the contract, if that is possible, or to demand its dissolution, in addition to the payment of losses and damages in both cases.

This article is concordant with article 1184 of the Code of Napoleon, which reads:

The rescissory condition is always to be understood in sinalagmatic contracts in the event that one of the parties should not fulfill his obligation.

In such case the contract is not dissolved *ipso jure*. The party in relation to whom the agreement has not been fulfilled may elect to force the other party to the performance of the contract, if possible, or to demand the rescission of same and the payment of damages and interest.

The annulment of the contract must be demanded judicially and the defendant may be granted a period of time proportionate to the circumstances.

And article 1165 of the Italian Civil Code, also concordant, reads:

The condition of rescission is always to be understood in bilateral contracts in the event but one of the parties should not meet his obligation.

In this case the contract is not dissolved *ipso jure*. The party in respect to whom the obligation has not been fulfilled has the choice between forcing the other party to the fulfillment of the contract, when this is possible, or demanding its annulment, and in addition compensation for damages in both cases.

The dissolution of the contract must be demanded judicially and a period may be granted to the obligee according to the circumstances.

And to the like effect are the concordant articles of the German Civil Code, article 160; Spanish Civil Code, article 1124; Mexican Civil Code, article 1465-1466; Holland Civil Code, article 1302; Chilean Civil Code, 1489; Uruguayan Civil Code, article 1392; Guatemalan Civil Code, article 1467; Bolivian Civil Code, article 1169.

Each and every one of the civil codes founded upon the same system of justice and its administration contemplate and require that in the event of a default on the part of one party to a bilateral contract the other party thereto shall resort to the duly constituted tribunals of the country for the appropriate redress.

The common law of England is not otherwise.

The national constitution of Venezuela promulgated in 1901, by Title III, section 2, article 17, guarantees "the effectiveness of the following rights:

* * * * *

"Second. Property, which shall be subject only to the contributions decreed by legislative authority, in accordance with this constitution, and shall be taken possession of for works of public utility (only) after indemnification and condemnation proceedings."

The Executive decree of December 10, 1892, still in force, prescribes the elaborate judicial proceedings incident to condemnation proceedings.

It being once conceded that a contract of navigation carrying special rights and privileges granted upon reserved conditions of value on account of which the grantee has either rendered services or incurred any debt or detriment constitutes a property right, it is apparent that the grantor can not even under the local law in force in Venezuela abrogate the same, even for purposes of public policy or public benefit, without resorting to the methods prescribed by law.

It is suggested in the answer of the respondent Government, that, admitting the right of the claimant to recover with respect to the services rendered by way of use and detention of steamers, passages and the like, that such recovery can only be in accordance with tariffs or schedules agreed upon between the parties, the deduction being as we understand it that if no schedules or tariffs had been actually agreed upon between the parties in advance of the service, or perhaps afterwards, that no recovery could be had in this case therefor.

In response to this, it seems necessary but to say that the services rendered in the way of carrying freights and passengers were rendered upon the deliberate orders of the Government officials, and in nearly all instances refer to the terms of the contract providing for the reduction from the regular tariffs on Government account.

The regular passenger and freight tariffs were public and notorious. They were or should have been as well known to the Government officials as they were to the private traveler. The demand for services

to be rendered in the presence of such existing tariffs must be taken as an acquiescence in the rates so established.

With respect to the per diem charges for the detention and use of company's steamers, it is to be noted that such detentions and use arose not out of any convention between the Government officials and the company's agents, but were brought about by the arbitrary orders of and superior force at the disposal of the latter. Such detention and use of the steamers disarranged and seriously interfered with the orderly prosecution of the company's business, and while it is at once conceded that the claimant is only entitled to recover reasonable compensation for such use, it is submitted that under the circumstances the burden is upon the respondent to show wherein the charges made on such account are unreasonable. In the accounts rendered to and settled by the Government by the transaction of May 10, 1900, similar charges were made for use and detention of the same or similar steamers, and the charges as then made were accepted and settled as above stated without objection, thus evidencing the acquiescence of the Government in the reasonableness of such charges. (In this connection see original Ex. B.)

Referring to the item in the claim covering imposts illegally collected and to the reply of the honorable agent of Venezuela to the effect that as said items include payments which were made in the years 1898, 1899, and 1900, they were consequently included in the transaction of May 10, 1900, and therefore should be rejected, the conclusive effect of that settlement upon all claims or items in dispute or which might at the date mentioned have been brought in dispute between the parties is admitted, and this would seem to put an end to the alleged counterclaim of the respondent.

While it is stated in the caption of bill (cuenta) No. 14 that such imposts "from the 1st November, 1898, to the 31st of March, 1902, amount in the aggregate to \$19,571.34," it will be noted, on inspection of the detailed accounts and accompanying affidavits that relate to this item, that the "illegal charges" therein specified for which recovery is here sought all occurred in the year 1902. Being subsequent in date to the settlement of May 10, 1902, and not referred to in either paper writing evidencing the same, they would seem not to have been affected by it.

It is further objected on the part of Venezuela that the transfer or assignment from the Orinoco Shipping and Trading Company, Limited, to the claimant company is invalid, because not made in accordance with the terms of the contract itself or with requirement of law. The second branch of this objection is answered by the protocol, and has been referred to above. The only reference in the contract of June 8, 1894, to the right of transfer occurs in article 13 (Mem., p. 11), as follows:

This contract * * * may be transferred by the contractor to another person or corporation upon previous notice to the Government. The transfer shall not be made to any foreign government.

By the "contractor" so referred to is undoubtedly meant the original concessionaire, Ellis Grell, who, after giving previous notice to the Government, transferred the contract to the Orinoco Shipping and Trading Company, Limited. Subject only to the restriction that the contract should not be transferred to any foreign government, it would seem that this transferee might make such further transfers as it might

think best without formally giving notice in advance; but, if the Commission should think otherwise, it is to be observed that this requirement as to notice of transfer relates only to the navigation concession itself, which, it is above contended, was annulled by the decree of October 5, 1900, and the extension of May 10, 1900, was further especially annulled by the decree of December 14, 1901, thus leaving, at least on the latter date, nothing of the concession itself in existence, while the assignment from the first-named company to the claimant company was only executed on April 1, 1902. It would seem, therefore, that this objection is without force, as it is certain that as the franchise of navigation from the standpoint of the Venezuelan Government did not and could not pass, the condition as to previous notice had no bearing.

The requirement as to notice could have no effect upon the assignment from one company to the other of assets, including book accounts and claims.

In regard to the damages for destruction of the concession contract, estimated at \$82,432.78 per annum, it is objected by the respondent that the estimate "is entirely arbitrary." It would seem to be sufficient in reply to refer to the fact stated in the former brief that the estimate is based upon the settlement of May 10, 1900, when the minister for foreign affairs, acting in the interest of the Republic and serving its ends, put the Government's valuation upon the extension of the concession and the company accepted it by canceling admitted debts for the total amount thereof. It is also substantiated by the demonstrated earning capacity of the franchise or concession even under adverse circumstances.

When a wanton wrong has been committed by one party upon another, legal tribunals do not aim to minimize the damages which the injured party has suffered. If difficulties lie in the way of ascertaining with exactitude the amount of injury, they should be resolved against the wrongdoer and in favor of the person wronged. If the wrong had not been committed, a mathematical computation of the injury would not have become necessary. It may well be that the value of the concession is even greater than is assumed in the above estimates. A monopoly ordinarily appreciates as business grows in importance and extent.

The amount of capital invested in this business by the company may be, as is stated in the answer, of no concern to Venezuela, she not having overseen nor advised the investment; but it is to be borne in mind that this large capital was outlaid in preparing for and conducting the company's business in a proper manner and as the company understood it in accordance with the requirements of the contract. The amount of the investment is given not as a rule by which to measure the award which may be given in favor of claimant, but merely as an element to be taken into consideration in estimating the damages which claimant suffered. With the destruction of the exclusive right to prosecute free from competition a lucrative trade, the capital invested therein largely and necessarily depreciated in value. What is meant by the statement in the answer to the effect that this investment of capital only took place in 1900 "when the contract had already existed for six years, since 1894;" and "that during all that previous time the contracting party had not fulfilled his obligations," is not understood, as there does not appear to be any foundation in

the documents heretofore submitted to support such a deduction, and the case shows that the investment was made as occasion required, much of the amount having been invested in the purchase of the "Red Star Company" and the acquisition of the Grell plant, including the contract concession of June 8, 1894.

As the honorable agent for Venezuela in the answer of the respondent has seen fit to refer to the fact that the Government has filed a suit in the local courts against this claimant to recover for damages alleged to have been suffered by it from the alleged failures on the part of the claimant to fulfill its obligations under this contract, it may not be amiss, by way of showing the value which the Government itself even now attaches to the business connected with the contract, to quote the following extract from the declaration filed in that suit, viz:

The losses and damages which the defendant company suffered from the non-execution of the fundamental contracts are computed at eighteen million bolivars (Bs. 18,000,000), calculating at *two million bolivars* per annum, the returns which the Government has failed (will fail) to receive, in each year, for customs revenues of the various ports which should have been joined by the line of steamers which the company bound itself to establish, and this during nine consecutive years; and in addition to this sum, nine hundred thousand bolivars (Bs. 900,000) in which are computed the sealed paper and stamps which the National Government has failed to sell for the clearance of vessels, shipments of merchandise, exportation of products, and coasting trade at those various points of the itinerary of the line, during the nine years that have been spoken of, calculating the same at one hundred thousand bolivars per annum.

Without at all touching upon the merits of that proceeding, it would seem to be in good order to remark that, when considered in the light of such an estimate and of the amount of business which must necessarily be done by the company to produce such revenues, and of the freights to be derived therefrom, the estimate of value placed upon the annulled contract is most modest.

Referring to the demand of the honorable agent for Venezuela for the production of the original documents and vouchers relating to this claim, copies of which have heretofore been submitted to the Commission, I need only say that all of such original documents are at this moment in the custody of the United States legation in Caracas and can there be examined by the honorable agent for Venezuela at his convenience. These papers are also subject to the orders of this Commission, and the agent for the United States will cheerfully comply with any order that the Commission may make in regard thereto.

It may be noted that although the contract concession of June 8, 1894, was broken by the decree of October 5, 1900, the claimant's predecessor, so far as performance on its part was concerned, elected to consider it still in force until it suffered an actual damage by the passage of an opposition ship laden with cargo through the Macareo channel. Such actual damage does not appear to have occurred until on or about August 2, 1902 (Dip. Cor., 91 et seq. and certificate of Harbor Master Saunders). Since that date the passage of competing ships laden with cargo and sailing from a foreign port through the Macareo or Pedernales channels has occurred frequently, and this, too, despite the proclamation on June 28, 1902, of the domestic blockade of the Orinoco River ports. (Harbor masters' certificates.) It may be, considering that the claimant's predecessor practically enjoyed the exclusive right of navigation to which it was entitled under said con-

tract, that the practical breach of the contract should be declared to have occurred only on August 2, 1902, when the *Rescue* made her first voyage carrying freights which properly should have been carried by the Orinoco Steamship Company. If so, then, in computing damages for the breach of the concession, the unexpired term should perhaps be computed from said date rather than from October 5, 1900 as claimed.

It would seem from the proofs submitted that the claimant and its predecessor elected to consider the concession in force until practical damage occurred.

NEUTRALITY.

In the answer of the respondent Government it is stated that it—

wishes to bring to the knowledge of the honorable Mixed Commission that the Orinoco Shipping and Trading Company, Limited, has taken part in the internal affairs of the nation, as is proven by the evidence which I produce, together with sundry publications.

The so-called proof consists of some eleven *ex parte* affidavits, all taken since the date of filing the claim before this tribunal. Although all of these affidavits were taken either in Caracas or at Port of Spain, in Trinidad, at both of which places the claimant was represented by officers or agents, no notice of intention to take the same was given to the agent for the United States nor to any of the officers or agents of the claimant, and no opportunity was afforded to cross-examine the affiants.

Each of the affiants is represented as being of Ciudad Bolivar, but temporarily resident in the places in which the respective affidavits were made, and no effort is made in the affidavits to afford any clue to their present whereabouts.

In response to the first set of inquiries of the honorable agent for Venezuela, Timoteo Carvajal states that in May, 1902, he found "at the island of Trinidad all the larger steamers belonging to the Orinoco Steamship Company, and *I was* told in the latter port," etc. Also that—

All that I have stated is known to me, as well because I have been an eyewitness to many of the events to which I have referred as *because those which I did not witness have been communicated to me by persons who merit entire faith.*

Alejandro Plaza Ponte states that he was an eyewitness *to the greater part* of the events to which he refers: "And as to those which I did not witness, I know from correspondence which I have received from honorable persons who merit my entire confidence."

Luis Felipe Rojas Fernandez states that he founds his deposition "on the fact that I was either an eyewitness to the events and incidents to which I refer in same, or else they have been related to me by other eyewitnesses who are worthy of belief."

As none of these gentlemen takes any pains to distinguish the occurrences of which he was an eyewitness from those which were merely reported to him by others, it would seem to place the whole of each of the affidavits, even if otherwise competent evidence, in the category of the baldest hearsay.

In the caption of the depositions the honorable attorney-general of the nation, who is also the agent for Venezuela before this Commission, states that he wishes "to prove certain acts ascribed to the foreign concern styled 'the Orinoco Steamship Company,' which was

formerly called 'the Orinoco Shipping and Trading Company, Limited,' *acts* performed against the present political order and in open contravention to all the duties of neutrality which foreigners should observe during civil wars."

As the claims of the company against Venezuela are entirely composed either of items covering services rendered to the Government or its officials, or of items of damages for injuries to property, or the deliberate breach of a concession of navigation, and contains no item in the remotest degree connected with any supposed breach of the duty of a neutral, it is somewhat difficult to perceive the exact bearing of such proofs in this case.

The specific acts of unneutral conduct sought to be proved seem to be:

First. That in March and April, 1902, the company withdrew from Ciudad Bolivar all the larger steamers belonging to it under the pretext that they were to be repaired at Trinidad, thereby occasioning grave injuries to the Government by reason of preventing the timely mobilization of the forces that were operating against the revolution styled "Libertadora."

Second. That the steamers of the company after the blockade had been declared renewed their trips to Ciudad Bolivar flying a foreign flag, and carried to that port on various occasions ammunition and war materials intended for the said revolution.

Third. That the steamers of the company accepted without protest and carried on board fiscals (customs agents) appointed by Ramon C. Farreras, chief of the revolutionary movement at Ciudad Bolivar.

Fourth. That in the month of March, 1903, the company's steamer *Apure*, and on the 13th of May, 1903, the company's steamer *Guanare* carried munitions of war to Ciudad Bolivar and that such supplies passed into the hands of the revolutionists.

Assuming each and every one of these accusations to have been fully and satisfactorily proved and that the facts were material to any issue raised by this claim, still it is submitted the respondent Government has fallen far short of establishing any breach of neutral duty on the part of the claimant or its assignor.

Bearing in mind that the claimant company and its predecessor in interest were citizens of a foreign state engaged in the business of a common carrier by ships plying between an English crown colony and ports in Venezuela, owing no allegiance to the Government of Venezuela and no duty save such as the laws of nations and of the ports at which their vessels called imposed upon them, it is necessary to set up and prove some specific breach of the law of nations before a breach of neutrality is made out.

With respect to the alleged withdrawal of the ships from the Orinoco at a time when the Government officers desired to use them for mobilizing troops, it is sufficient to remark that breaches of neutrality have usually been considered to rest in positive acts, not in negative actions. To have placed ships in the service of the revolutionists, by charter or otherwise, while not at all amounting to a breach of neutrality, would nevertheless have rendered them liable to capture and condemnation, but there was no contract or charter relation between the company and the Government of Venezuela which entitled the latter to use the company's merchant ships as transports, and, if for the purpose of preserving them from the fate of the *Nutrias* and *Vencedor* they were withdrawn from harm's way, such precautionary measures

would hardly seem to resemble in a remote degree the acts necessary to constitute a breach of neutrality.

In connection with the charge of removing the steamers from the river, reference is made to the copies of protests and correspondence appearing in the volume of diplomatic correspondence at pages 12 to 23, inclusive; also pages 69 and 75 to 83, inclusive.

Charges 2 and 4 may be considered and answered together, the latter appearing to be merely a repetition of the former in more specific form.

That the company's steamers, flying the American flag as an evidence of their ownership and right of protection under consular registrations subsequent to June 28, 1901 (Venezuelan blockade), resumed their trips to and from Ciudad Bolivar, carrying cargo whenever the circumstances would permit, is not denied.

It is fundamental that blockades to be respected must be effective and continuously maintained. That the blockade in question was not being effectively maintained on the occasion of the trips complained of, all of which so far as is now known were made after the assault upon the Venezuelan navy by allied powers, is evidenced by the fact that the voyages were made without sighting a Venezuelan national force of any kind. In this connection it is notorious that from the 31st of May, 1902, until the 21st of July, 1903, Ciudad Bolivar was in the effective possession of the so-called revolutionary forces, who had there set up a de facto government. Because of this fact the United States of America in common with other powers refused to credit a decree of the Venezuelan Government prohibiting communication with that port, unless backed by sufficient force, as being an invasion of the law of blockade.

As to the character of the revolutionaries, whether belligerents or not, opinions may differ, but it is said by a publicist of high repute in discussing belligerency that, while a foreign State evidencing the recognition of belligerency must issue a formal notification of some kind, the most appropriate perhaps being a declaration of neutrality—a parent State stands in a different position. It can not be expected to volunteer direct recognition. The relation in which it conceives itself to stand to the insurgents must be inferred from its acts. Hence the question arises, what acts are sufficient to constitute indirect recognition? There can be no doubt as to the effect of acts, such as capture of vessels for breach of blockade or carriage of articles contraband of war, which affect the neutral directly, and in a manner permissible only in time of war. (Hall's Int. Law, sec. 5, p. 38.)

At page 82 of the same work the author, after distinguishing between the rules governing the relations of nations as belligerent and neutral and those governing the relations between a belligerent nation and a neutral individual, says:

The only duty of the individual is to his own sovereign; and so distinctly is this the case that acts done even with intent to injure a foreign State are only wrong in so far as they compromise the nation of which the individual is a member. * * *

Sec. 25. * * * It has been, and still is, usual (for publicists) to confuse neutral States and individuals in a common relation towards belligerent States; and in losing sight of the sound basis of the established practice they have necessarily failed to indicate any clear boundary of state responsibility. This want of precision is both theoretically unfortunate and not altogether without practical importance. For it has enabled governments from time to time to put forward pretensions, which, though they have never been admitted by neutral States and have never been carried into effect, can not be often made without endangering the stability of the principles they attack.

It will be found, whether by consulting usage or treaties, *not that trade in articles contraband of war is a breach of neutrality, but that the persons engaged in it are exposed to the confiscation of their goods.*

In response to a suggestion from England in 1793, Mr. Jefferson replied:

Our citizens have always been free to make, vend, and export arms. It is the constant occupation and livelihood of some of them. To suppress their callings, the only means perhaps of their subsistence, because a war exists in foreign and distant countries, in which they have no concern, would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace does not require from them such an internal derangement of their occupations.

And again in 1855, President Pierce, speaking of contraband of war, said—

that the laws of the United States do not forbid their citizens to sell to either of the belligerent powers articles contraband of war, or take munitions of war or soldiers on board their private ships for transportation; and although in so doing the individual citizen exposes his property or person to some of the hazards of war his acts do not involve any breach of national neutrality, nor of themselves implicate the Government. (Hall Int. Law, pp. 83-84.)

The carriage of contraband in neutral bottoms in event of capture subjects the contraband alone to confiscation and not the ship. (Hall, p. 692.)

As a consequence of the doctrine that the goods are seized because of their noxious qualities, and not because of the act of the person carrying them, it is held that so soon as the forbidden merchandise is deposited the liability which is its outgrowth is deposited also, and that neither the proceeds of its sales can be touched on the return voyage nor can the vessel, although previously affected by her contents, be brought in for adjudication. (The *Imina*, 3 Robinson's Rep., 168; Hall Int. Law, p. 696, and note; Wheaton (Laurence), Int. Law, p. 819, et seq.)

Nor does the law of blockade or intercourse with an interdicted port or place differ in civil war from what it is in a foreign war. (Lawrence's Wheaton (2d ed., 1863, p. 846, note.)

So it would seem that even if the companies or either of them in the ordinary course of its business as a common carrier received and transported to a port in possession of a de facto government contraband of war, it did not thereby commit any breach of neutral duty, and the voyages having long since ended, and the contraband, if any such ever was carried, having long since been deposited, all liability, which at no time amounted to more than a possible confiscation of the contraband itself, has long since passed away.

The claimant, acting in strict accord with the law of nations respecting the rights and duties of neutrals engaged in trade with the peoples of a foreign port, continued to transport to such port whenever its approaches were free from the danger incident to the presence of an armed force, such merchandise as was offered it for carriage. If any arms or munitions of war were carried, it does not appear that any officer of the company was aware of the contents of the packages, and if such knowledge were shown, it would only be necessary to say that the company had the legal right to transport such materials, if it chose to assume the risk of detention incident to possible capture and the subsequent confiscation of the contraband of war.

Repeating the incident of the capture of dispatches in 1901, addressed by General Rolando to Colonel Cotua and others and carried on the steamer *Bolivar* by the second captain, Mr. Rodriguez, it seems only necessary to say that such carriage was in direct contravention of rules

17, 18, and 19 of the company's manual for the government of its employees (copy herewith), and that upon the arrival of Mr. Rodriguez in Trinidad he was at once discharged for his breach and President Castro was formally notified of the fact, the letter of notification being published, presumably with his acquiescence, in the public prints of Caracas at the time. (Copy of rules filed with Commission.)

As to the charge of receiving on board of the steamers without protest the fiscals (treasury agents) appointed by General Farreras at Ciudad Bolivar, it need only be said that the company was dealing with a de facto government at that port. The laws of Venezuela required the steamers plying in the Orinoco to receive and carry such fiscals. When they appeared with the credentials of the de facto government, it was not for the company to question the sufficiency or regularity of their appointment any more than it is the duty or business of a captain of a ship upon entering a customs port to question the regularity of the appointment of the health or customs officer who, properly credentialed, boards his vessel in ordinary course.

The instructive note of Mr. Lawrence found at page 526 of Lawrence's Wheaton (2d ed., 1863) is so directly in point that I may be pardoned for quoting from it in extenso:

Not only are private individuals exempt from penalties for acquiescing in a government de facto, which exercises undisputed sway, and when all protection is withdrawn, from necessity or otherwise, by the previous government; but it is obvious that some police regulations and the administration of justice in every country, even during a revolutionary struggle, are essential to prevent anarchy and its attendant consequences. As Grotius said: "The acts of sovereignty which a usurper exercises, even before he has acquired an established right by long possession or convention, and while his possessory title is unjust, may be obligatory, not in virtue of his right—for he has none—but because there is every reason to suppose that the legitimate sovereign, whether people, king, or senate, would prefer that the usurper should be temporarily obeyed, than that the administration of the laws and justice should be interrupted and the State exposed to all the disorders of anarchy." (De Jur. Bel. ac Pac. lib. i. cap. 4, §15.) No exception was ever taken by the most scrupulous loyalist to the acceptance by Sir Matthew Hale of a seat on Cromwell's bench of judges; nor did it operate as a disqualification of his holding the same position on the return of Charles II.

(See also the case of the *Montijo*, 2 Moore Int. Arb., p. 1432 et seq. Also 11 Opinions Atty. Genl. U. S., 452, cited in case of *United States v. Trumbull*, 48 Fed. Rep., 99; s. c. *Scotts Cases on International Law*, p. 731. Also the article on "Neutrality," chap. 21 of *Wharton's Digest*, vol. 3, p. 497, secs. 389, 390, and 391.)

In conclusion, I repeat that, irrespective of the law on the subject, the suggested breaches of neutrality have no bearing whatever upon this claim, as no recovery is sought for any loss or damage suffered as the result of any supposed breach of neutrality, nor is it desired to enforce any contract made under conditions of hostility to the General Government; nor is it perceived how Venezuela can expect to escape a contract debt or other liability by showing that after the debt had accrued the debtor had carried on trade with her enemies.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

F. D. McKENNEY,
Of counsel for Claimant Company.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF OF the Orinoco Steamship Company, claimant, v. THE REPUBLIC OF VENEZUELA.	} Claim No. 19.
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BAINBRIDGE, *Commissioner*:

Inasmuch as, by reason of a disagreement between the Commissioners, this claim is to be submitted to the umpire, to whom in such case the protocol exclusively confides its decision, the Commissioner on the part of the United States limits himself to the consideration of certain questions which have been raised by the respondent Government affecting the competency of the Commission to determine this very important claim.

It may be presumed that in framing the convention establishing the Commission, the high contracting parties had clearly in view the scope of the jurisdiction to be conferred upon it, and deliberately chose, in order to define that scope, the words most appropriate to that end.

Article 1 of the protocol defines the jurisdiction of the Commission in the following terms:

All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the Commission hereinafter named by the Department of State of the United States or its legation at Caracas, shall be examined and decided by a mixed commission, which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by the President of the United States and the other by the President of Venezuela. It is agreed that an umpire may be named by the Queen of the Netherlands.

The protocol was signed at Washington on behalf of the respective Governments on the 17th of February, 1903. In view of the explicit language of the article quoted above, it would seem too clear for argument that the contracting parties contemplated and agreed to the submission to this tribunal of all claims, not theretofore settled by diplomatic agreement or by arbitration, which were *on that date* owned by citizens of the United States against the Republic of Venezuela.

The Orinoco Steamship Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey. It is the successor in interest, by deed of assignment dated April 1, 1902, of the Orinoco Shipping and Trading Company, Limited, a company limited by shares, organized under the English companies acts of 1862 to 1893, and duly registered in the office of the register of joint stock companies, London, England, on the 14th day of July, 1898. Among other of the assets transferred by the said deed of assignment were "all franchises, concessions, grants made in favor of the Orinoco Shipping and Trading Company, Limited, by the Republic of Venezuela, particularly the concession granted by the Government of Venezuela for navigation by steamer from Ciudad Bolivar to Maracaibo, originally made by the national executive with Manuel Antonio Sanchez, and approved by Congress on the 8th day of June, 1894," and "all claims and demands existing in favor of the Orinoco Shipping and Trading Company, Limited, against the Republic of Venezuela." The claims and demands referred to constitute in the main the claim here presented on behalf of the Orinoco Steamship Company.

The learned counsel for Venezuela contends that:

At the time when the acts occurred which are the basis of the claim, the Orinoco Steamship Company did not exist and could not have had any rights before coming into existence, and in order that it might be protected to-day by the United States of America it would be necessary in accordance with the stipulations of the protocol, that the damages, in the event of being a fact, should have been suffered by an American citizen, not that they should have been suffered by a third party of different nationality and later transferred to an American citizen; such a proceeding is completely opposed to equity and to the spirit of the protocol.

In the case of *Abbiatti v. Venezuela* before the United States and Venezuelan Claims Commission of 1890, the question arose whether the claimant, not having been a citizen of the United States at the time of the occurrences complained of, had a standing in court, and it was held that under the treaty claimants must have been citizens of the United States "at least when the claims arose." This was declared to be the "settled doctrine."

Mr. Commissioner Little, in his opinion, says:

As observed elsewhere the infliction of a wrong upon a State's own citizen is an injury to it, and in securing redress it acts in discharge of its own obligations, and, in a sense, in its own interest. This is the key—*subject of course to treaty terms*—for the determination of such jurisdictional questions: Was the plaintiff State injured? It was not, when the person wronged was at the time a citizen of another State. Naturalization transfers allegiance, but not existing State obligations.

It is to be observed that in attempting to lay down a rule applicable to the case the Commission is careful to make the significant reservation that the rule enunciated is "subject of course to treaty terms." It does not deny the competency of the high contracting parties to provide for the exercise of a wider jurisdiction by appropriate terms in a treaty. And that is precisely what has been done here. The unequivocal terms employed in the present protocol were manifestly chosen to confer jurisdiction of all claims owned (on February 17, 1903) by citizens of the United States against the Republic of Venezuela presented to the Commission by the Department of State of the United States or its legation at Caracas. Under these treaty terms the key to such a jurisdictional question as that under consideration is the *ownership* of the claim by a citizen of the United States of America on the date the protocol was signed.

The present claim, together with other assets of the Orinoco Shipping and Trading Company, Limited, was acquired by valid deed of assignment by the Orinoco Steamship Company, a citizen of the United States, on April 1, 1902, long prior to the signing of the protocol, and is therefore clearly within the jurisdiction of this Commission.

Pursuant to the requirements of the convention the Commissioners and the umpire, before assuming the functions of their office, took a solemn oath carefully to examine and impartially decide according to justice and the provisions of the convention all claims submitted to them. Undoubtedly the first question to be determined in relation to each claim presented is whether or not it comes within the terms of the treaty. If it does the jurisdiction of the Commission attaches.

Jurisdiction is the power to hear and determine a cause; it is *coram judice* whenever a case is presented which brings this power into action. (*United States v. Arredondo*, 6 Pet., 691.)

Thenceforward the Commission is directed by the protocol and is bound by its oath carefully to examine and impartially to decide in conformity with the principles of justice and the rules of equity all questions arising in the claim, and its decision is declared to be final and conclusive.

The jurisdiction exercised by this Commission is derived from a solemn compact between independent nations. It supersedes all other jurisdictions in respect of all matters properly within its scope. It can not be limited or defeated by any prior agreement of the parties litigant to refer their contentions to the local tribunals. Local jurisdiction is displaced by international arbitration; private agreement is superseded by public law or treaty.

As to every claim fairly within the treaty terms, therefore, the functions of this Commission, under its fundamental law and under its oath, are not fulfilled until to its careful examination there is added an impartial decision upon its merits. It can not deny the benefit of its jurisdiction to any claimant in whose behalf the high contracting parties have provided this international tribunal. Jurisdiction assumed, some *decision*, some final and conclusive action in the exercise of its judicial power, is incumbent upon the Commission. Mr. Commissioner Gore, in the case of the *Betsy*, before the United States and British Commission of 1794, well said:

To refrain from acting when our duty calls us to act is as wrong as to act where we have no authority. We owe it to the respective Governments to refuse a decision in cases not submitted to us—we are under equal obligation to decide on those cases that are within the submission. (3 Moore, Int. Arb., 2290.)

Finally, the protocol imposes upon this tribunal the duty of deciding all claims "upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation." Clearly, the high contracting parties had in view the substance and not the shadow of justice. They sought to make the remedies to be afforded by the Commission dependent not upon the niceties of legal refinement, but upon the very right of the case. The vital question in this, as in every other claim before this tribunal, is whether and to what extent citizens of the United States of America have suffered loss or injury, and whether and to what extent the Government of Venezuela is responsible therefor.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of the Orinoco Steamship Company, v. THE REPUBLIC OF VENEZUELA.	}	Claim No. 19.
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Doctor GRISANTI, *Commissioner*:

The Orinoco Steamship Company, Limited, demands payment of the Government of Venezuela for four claims, as follows:

First. For \$1,209,701.05, which sum the claimant company reckons as due for damages and losses caused by the Executive decree having, as the company affirms, annulled its contract-concession celebrated on May 26, 1894. The company deems as a reasonable value of the contract \$82,432.78 per annum.

Second. For \$147,638.79, at which the claimant company estimates the damages and losses sustained during the last revolution, including services rendered to the Government of the Republic.

Third. For 100,000 bolivars, or \$19,219.19 overdue on account of the transaction celebrated on May 10, 1900.

Fourth. For \$25,000 for counsel fees and expenses incurred in carrying out said claim.

The forementioned claims are held by the Orinoco Steamship Company, a corporation of American citizenship, organized and existing under and pursuant to the provision of an act of the legislature of the State of New Jersey as assignee and successor of the Orinoco Shipping and Trading Company, Limited, of English nationality, organized in conformity with the respective laws of Great Britain.

And in fact it has always been The Orinoco Shipping and Trading Company, Limited, which has dealt and contracted with the Government of Venezuela, as evidenced by the documents and papers relating thereto. In case the forementioned claims be considered just and correct, the rights from which they arise were originally invested in the juridical character (*persona juridica*) of the Orinoco Shipping and Trading Company, Limited; and its claims are for the first time presented to this Mixed Commission by and on behalf of the Orinoco Steamship Company, as its assignee and successor, in virtue of an assignment and transfer which appears in Exhibit No. 3 annexed to the memorial in pages 51 to 59 of the same, and in reference to which assignment we shall presently make some remarks.

Before stating an opinion in regard to the grounds of said claims, the Venezuela Commissioner holds that this Commission has no jurisdiction to entertain them. Said objection was made by the honorable agent for Venezuela prior to discussing the claims in themselves, and as the Venezuela Commissioner considers such objection perfectly well founded, he adheres to it, and will furthermore state the powerful reasons on which he considers said objection to be founded.

It is a principle of international law, universally admitted and practiced, that for collecting a claim protection can only be tendered by the government of the nation belonging to the claimant who originally acquired the right to claim, or, in other words, that an international claim must be held by the person who has retained his own citizenship since said claim arose up to the date of its final settlement, and that only the government of such person's country is entitled to demand payment for the same, acting on behalf of the claimant. Furthermore, the original owner of the claims we are analyzing was the Orinoco Shipping and Trading Company, Limited, an English company; and that which demands their payment is the Orinoco Steamship Company, Limited, an American company; and as claims do not change nationality for the mere fact of their future owners having a different citizenship, it is as clear as daylight that this Venezuelan-American Mixed Commission has no jurisdiction for entertaining said claims. The doctrine which I hold has also been sustained by important decisions awarded by international arbitrations.

Albino Abbiatti applied to the Venezuelan-American Mixed Commission of 1890 claiming to be paid several amounts which in his opinion the Government of Venezuela owed him. The acts alleged as the grounds for the claims took place in 1863 and 1864, at which time Abbiatti was an Italian subject, and it appears that subsequently, in

1866, he became a United States citizen. The Commission disallowed the claim declaring its want of jurisdiction to entertain said claim, for the following reasons:

Has the claimant, then, not having been a citizen of the United States at the time of the occurrence complained of, a standing here? The question is a jurisdictional one. The treaty provides: "All claims on the part of corporations, companies, or individuals, citizens of the United States," upon the Government of Venezuela * * * shall be submitted to a new commission, etc. Citizens when? In claims like this they must have been citizens at least when the claims arose. Such is the settled doctrine. The plaintiff State is not a claim agent. As observed elsewhere, the infliction of a wrong upon a State's own citizen is an injury to it, and in securing redress it acts in discharge of its own obligations and, in a sense, in its own interest. This is the key, subject of course to treaty terms, for the determination of such jurisdictional questions. Was the plaintiff State injured? It was not, where the person wronged was at the time a citizen of another State, although afterwards becoming its own citizen. The injury there was to the other State. Naturalization transfers allegiance, but not existing State obligations. Abbiatti could not impose upon the United States by becoming its citizen, Italy's existing duty toward him. This is not a case of uncompleted wrong at the time of citizenship or of one continuous in its nature.

The Commission has no jurisdiction of the claim for want of required citizenship, and it is therefore dismissed. (United States and Venezuelan Claims Commission—Claim of Albino Abbiatti *versus* The Republic of Venezuela, No. 34, Citizenship, page 84.)

In the case mentioned Abbiatti had always owned the claim, but as he was an Italian subject when the damage occurred, the Commission declared having no jurisdiction to entertain said claim, notwithstanding that at the time of applying to the Commission he had become a citizen of the United States.

Article 1 of the protocol, signed at Washington on February 17 of the current year, says, textually, as follows: "*All claims owned by citizens of the United States of America against the Republic which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission hereinafter named by the Department of State of the United States or its legation at Caracas, shall be examined and decided by a mixed commission,*" etc. Owned when? we beg to ask in our turn, as in the above-inserted decision. Owned *ab initio*; that is to say, owned since the moment when the right arose up to the moment of applying with it to this Mixed Commission. The verb "to own" means to *possess*, and as used in the protocol signifies "*being the original proprietor,*" therefore it will not suffice that the claim be possessed by a citizen of the United States at the time the protocol was signed; the jurisdiction of this Commission requires that the right should have risen in the citizen of the United States, and that said citizen shall never have failed to be the owner of such a right. Thus, and thus only, could the Government of the United States protect the claimant company; thus and on such conditions alone would this Commission have jurisdiction to entertain said claims.

If the clause "All claims owned by citizens of the United States of America," etc., were considered doubtful, and consequently should require interpretation, it ought undoubtedly to be given in accordance with the forementioned universal principle—the basis of this statement—and not in opposition to it. Derogation of a principle of law in a judicial document has to be most clearly expressed, otherwise the principle prevails, and the protocol must be interpreted accordingly.

While in some of the earlier cases the decisions as to what constituted citizenship within the meaning of the convention were exceptional, it was uniformly held that such citizenship was necessary when the claim was presented as well as when it arose. Numerous claims were dismissed on the ground that the claimant was not a citizen when the claim arose. The assignment of a claim to an American citizen was held not to give the commission jurisdiction.

An American woman who was married in July, 1861, to a British subject in Mexico was held not to be competent to appear before the commission as a claimant in respect of damage done by the Mexican authorities in November, 1861, to the estate of her former husband, though her second husband had in 1866 become a citizen of the United States by naturalization. On the other hand, where the nationality of the owner of a claim, originally American or Mexican, had for any cause changed, it was held that the claim could not be entertained. Thus, where the ancestor, who was the original owner, had died, it was held that the heir could not appear as a claimant unless his nationality was the same as that of his ancestor. The person who had the "right to the award" must, it was further held, be considered as the "real claimant" by the commission, and whoever he might be must "prove himself to be a citizen" of the government by which the claim was presented. (Moore, *International Arbitrations*, vol. 2, p. 1353.)

In the memorial (No. 4) it is affirmed that 99 per cent of the total capital stock of the Orinoco Shipping and Trading Company, Limited, was owned by citizens of the United States of America, but this circumstance, even if it were proved, does not deprive said company of its British nationality, on account of its being organized according to the referred-to memorial, under the English companies' acts of 1862 to 1893, and duly registered in the office of the register of joint stock companies, London, on the 14th of July, 1898. The fact is, that limited companies owe their existence to the law in conformity to which they have been organized, and consequently their nationality can be no other than that of said law. The conversion of said company, which is English, into the present claimant company, which is North American, can have no retroactive effect in giving this tribunal jurisdiction for entertaining claims which were originally owned by the first-mentioned company, as such would be to overthrow, or infringe, fundamental principles.

NATURALIZATION NOT RETROACTIVE.

Without discussing here the theory about the retroactive effect of naturalization for certain purposes, I believe it can be safely denied in the odious matter of injuries and damages. A government may resent an indignity or injustice done to one of its subjects, but it would be absurd to open an asylum to all who have, or believe they have, received some injury or damage at the hands of any existing government to come and be naturalized for the effect of obtaining redress for all their grievances. (Moore, work cited, vol. 3, p. 2483.)

The three quotations inserted hold and sanction the principle that, in order that the claimant might allege his rights before a mixed claims commission organized by the government of his country and that of the owing nation, it was necessary that the claim always belonged to him, and that he should never have changed his nationality. And this principle demands that this Commission should declare its want of jurisdiction, whether the two companies be considered as different juridical character (*personæ juridicas*) and that the claimant is a successor of the other, or whether they be considered as one and the same, having changed nationality.

I now beg to refer to another matter—to the analysis of the judicial value of the deed of assignment.

In the first number of the exhibit "the Orinoco Shipping and Trading Company," which is the claimant, the nine steamships named, respectively, *Bolívar*, *Manzanares*, *Delta*, *Apure*, *Guanaro*, *Socorro*, *Masparro*, *Horos*, and *Morganito*. These steamships were destined for coastal service or cabotaje, some to navigate the rivers Guanaro, Cojedes, Portuguesa, and Masparro, from Ciudad Bolívar up to the mouth of the Uribanto River (Olacchea contract of June 27, 1891) and others, to navigate between said Ciudad Bolívar and Maracaibo, and to call at the ports of La Vela, Puerto Gabello, La Cuayra, Guanta, Puerto Sucre, and Carupano (Grell contract, June 8, 1894), this line was granted the option of calling at the ports of Curaçao and Trinidad.

While the Government fixes definitely the transshipment ports for merchandise from abroad, and while they are making the necessary installations (art. 12).

However, the coastal trade can only be carried on by ships of Venezuelan nationality, in conformity with article 1, Law XVIII of the Financial Code, which provides that:

Internal maritime trade of cabotaje, or coastal service, is that which is carried on between the open ports of Venezuela and other parts of the continent, as well as between the banks of its lakes and rivers, in national ships, whether laden with foreign merchandise for which duties have been paid or with native goods or productions. (Comercio de Catotaje, p. 87.)

And if we further add that the steamers were obliged to navigate under the Venezuelan flag (art. 2 of the Groll contract), as in fact they did, the result is that said steamers are Venezuelan by nationalization; wherefore, the assignment of said steamers pretended by The Orinoco Shipping and Trading Company, Limited, to the claimant company, is absolutely void and of no value, owing to the fact that the stipulations provided by the Venezuelan law (herewith annexed) for the validity of such an assignment, were not fulfilled.

LAW XXXIII (FINANCIAL CODE).—*On the naturalization of ships.*

ART. 1st. The following alone will be held as national ships:

1st. * * *

2nd. * * *

3rd. * * *

4th. Those nationalized according to law.

ART. 6th. * * *

* * * * *

"only. The guarantee given for the proper use of the flag must be to the satisfaction of the custom-house. The property deed must be registered at the office of the place where the purchase takes place, and if such purchase is made in a foreign country a certificate of the same, signed by the Venezuelan consul and by the harbor master, shall have to be sent, drawn on due stamped paper."

ART. 12th. When a ship, or a part thereof, is to be assigned, a new patent must be obtained by the assignee, after having presented the new title deeds to the custom-house, and receiving therefrom the former patent, stating measurements and tonnage therein contained, in order to obtain said patent.

The assignment of the aforementioned steamer is, to the Government of Venezuela, void and of no value or effect whatever.

In Exhibit No. 2, "The Orinoco Shipping and Trading Company, Limited," appears assigning several immovable properties situated in the territorio Federal Amazonas of the Republic of Venezuela to the claimant company, and the title deed has not been registered at the subregister office of said territory, as prescribed by the Venezuelan Civil Code in the following provisions:

Arr. 1883. Registration must be made at the proper office of the department, district, or canton, where the immovable property which has caused the deed is situated.

Arr. 1886. In addition to those deeds which, by special decree are subject to the formalities of registration, the following must be registered:

1st. All acts between living beings, due to gratuitous, onerous, or assignment title deeds of immovable or other property or rights susceptible of hypothecation.

In Exhibit No. 3, The Orinoco Shipping and Trading Company, Limited, appears assigning the Olachea contract of June 27, 1891, and the Grell contract of June 8, 1894. In assigning the first of these, the approval of the Venezuelan Government was not obtained, either before or after, thereby infringing the following provision:

This contract may be transferred wholly or in part to any other person or corporation upon previous approval of the National Government.

In assigning the second, the stipulation provided in article 13 of giving previous notice to the Government, was infringed. If any argument could be made in regard to the annulment of the latter assignment, there is no doubt whatever in regard to the annulment of the former, whereas in the foregoing provision the Government reserves the right of being a contracting party in the assignment, and consequently said assignment, without the previous consent of the Government, is devoid of judicial efficacy.

The assignment of those contracts is, therefore, of no value for the Government of Venezuela.

The fifth paragraph of the same refers to the assignment which "The Orinoco Shipping and Trading Company, Limited," intended to make to "The Orinoco Steamship Company" of all claims and demands existing in favor of the party of the first part, either against the Republic of Venezuela or against any individuals, firms, or corporations. This transfer of credits which are not specified nor even declared, and which has not been notified to the Government, is absolutely irregular and lacks judicial efficacy with regard to all parties except the assignor and assignee companies in conformity with article 1496 of the civil code, which provides as follows:

An assignee has no rights against third parties until after the assignment has been notified to the debtor or when said debtor has accepted said assignment.

The foregoing article is, in substance, identical to article 1890 of the French Civil Code, and in reference thereto Baudry-Lacantinerie says that—

Les formalités prescrites par l'art. 1690 ont pour but de donner à la cession une certaine publicité, et c'est pour ce motif que la loi fait de leur accomplissement une condition de l'investiture du cessionnaire à l'égard des tiers. Les tiers sont réputés ignorer la cession tant qu'elle n'a pas été rendue publique par la signification du transport ou par l'acceptation authentique du cédé; voilà pourquoi elle ne leur devient opposable qu'à dater de l'accomplissement de l'une ou de l'autre de ces formalités. (Précis du Droit Civil, Tome troisième, p. 394, numéro 624.)

Quelles sont les personnes que l'article 1690 désigne sous le nom de tiers, et à l'égard desquelles le cessionnaire n'est saisi que par la notification ou l'acceptation authentique du transport? Ce sont tous ceux qui n'ont pas été partie à la cession et qui ont un intérêt légitime à la connaître et à la contester, c'est-à-dire: 1° le cédé;

2° tous ceux qui ont acquis du chef du cédant des droits sur la créance cédée; 3° les créanciers chirographaires du cédant.

1. *Le débiteur cédé.*—Jusqu'à ce que le transport lui ait été notifié ou qu'il l'ait accepté, le débiteur cédé a le droit de considérer le cédant comme étant le véritable titulaire de la créance. La loi nous fournit trois applications de ce principe. (Baudry-Lacantinerie, work and volume quoted, p. 395. See also Laurent, "Principes de Droit Civil," vol. 24, p. 472.)

I do not expect that the foregoing arguments be contested, having recourse to the following provision of the protocol:

The commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation.

If such a broad sense were given to this clause in regard to all cases as to bar any consideration for Venezuelan law it would not only be absurd but monstrous. Such, however, can not be the case. How could a claim possibly be disallowed on the grounds of the claimant being a Venezuelan citizen without invoking the Venezuelan law which bestows upon him said citizenship? How, in certain commissions, could Venezuela have been exempted from having to pay for damages caused by revolutionists if the judicial principles which establish such exemption had not been pleaded? Said clause provides that no regard shall be had to objections of a technical nature or of the provisions of local legislation whenever such objections impair principles of equity, but when in compliance with said principles to disregard those objections would be to overthrow equity itself, and equity has to be the basis for all the decisions of this Commission. In the present instance conformity exists between the one and the others. And in merely adding that the majority of the cited provisions are in reference to contracts it is understood that their basis has been equity and not rigorous law. On the other hand if this Commission were to decide upon paying an award for a claim which the claimant company is not properly entitled to through not being the owner thereof it would be a contention against the precepts of equity.

In view, therefore, of the substantial irregularities of the deed of assignment and transfer, the Government of Venezuela has a perfect right to consider "The Orinoco Shipping and Trading Company, Limited," as the sole owner of the claims analyzed, and whereas said company is of British nationality this Venezuelan-American Mixed Commission has no jurisdiction to entertain the claim mentioned.

The incompetency of this Commission has been perfectly established. I shall now analyze the claims in themselves. The Orinoco Steamship Company holds that the executive decree promulgated on October 5, 1900, allowing the free navigation of the Macareo and Pedernales channels, annulled its contract-concession of May 26, 1894, which contract the claimant company considered as granting it the exclusive right to carry on foreign trade through said channels. The company states as follows:

Since said 16th day of December, A. D. 1901, notwithstanding the binding contract and agreement between the United States of Venezuela and The Orinoco Shipping and Trading Company, Limited, and your memorialist, as assignee of said company, to the contrary, said United States of Venezuela, acting through its duly constituted officials, has authorized and permitted said Macareo and Pedernales channels of the river Orinoco to be used and navigated by vessels engaged in foreign trade other than those belonging to your memorialist or its predecessors in interest, and has thus enabled said vessels to do much of the business and to obtain the profits therefrom which, under the terms of said contract-concession of June 8, 1894, and the extension thereof of May 10, 1900, should have been done and obtained solely by your memorial-

ist or its said predecessor in interest, and much of said business will continue to be done and the profits derivable therefrom will continue to be claimed and absorbed by persons and companies other than your memorialist, to its great detriment and damage. (Memorial, pp. 28 and 29.)

Let us state the facts such as they appear in the respective documents.

On July 1, 1893, the executive power issued a decree in order to prevent contraband which was carried on in the several bocas (mouths) of the river Orinoco, to wit:

ART. Vessels engaged in foreign trade with Ciudad Bolivar shall be allowed to proceed only by way of the Boca Grande of the river Orinoco; the Macareo and Pedernales channels being reserved for the coastal service, navigation by the other channels of the said river being absolutely prohibited.

On May 26, 1894, the executive power entered into a contract with Mr. Ellis Grell, represented by his attorney, Mr. Manuel Antonio Sanchez, wherein the contractor undertook to establish and maintain in force navigation by steamers between Ciudad Bolivar and Maracaibo, in such manner that at least one journey per fortnight be made, touching at the ports of La Vela, Puerto Cabello, La Guayra, Quanta, Puerto Sucre, and Carupano. Article 12 of this contract stipulates as follows:

While the Government fixes definitely the transshipment ports for merchandise from abroad, and while they are making the necessary installations, the steamers of this line shall be allowed to call at the ports of Curaçao and Trinidad, and any one of the steamers leaving Trinidad may also navigate by the channels of the Macareo and Pedernales of the river Orinoco, in conformity with the formalities which by special resolution may be imposed by the minister of finance in order to prevent contraband and to safeguard fiscal interests; to all which conditions the contractor agrees beforehand.

On October 5, 1900, the National Executive promulgated the following decree:

ARTICLE 1. The decree of the 1st of July, 1893, which prohibited the free navigation of the Macareo, Pedernales, and other navigable waterways of the river Orinoco, is abolished.

Did the 1894 contract grant the Orinoco Shipping and Trading Company, Limited, an exclusive privilege to engage in foreign trade with the use of said Macareo and Pedernales channels? The perusal of article 12 above referred to, will suffice, without the least hesitation, to answer this question negatively. The fact is that the company's contract concession is for establishing the inward trade between the ports of the Republic, from Ciudad Bolivar to Maracaibo; and the company's steamers were only granted a temporal permission to call at Curaçao and Trinidad, *while the Government fixed definitely the transshipment ports for merchandise from abroad, and while they were making the necessary installations.*

It would be necessary to overthrow the most rudimental laws of logic in order to hold that a line of steamers established to engage in coastal trade or *cabotaja*, navigating on the Macareo and Pedernales channels, which are free for internal navigation, should have the privilege of engaging in foreign trade through the mentioned channels. The decree of July 1, 1893, promulgated to prevent contraband in the channels of the river Orinoco, and on the coast of Paria, is not a stipulation of the contract concession of the Orinoco Shipping and Trading Company, Limited, and therefore the Government of Venezuela could willingly abolish it, as in fact, it did abolish it on Octo-

ber 5, 1900. Neither is it reasonable to suppose that the Government at the time of celebrating the referred-to contract, alienated its legislative powers, which, owing to their nature, are unalienable. On the other hand, a privilege, being an exception to common law, must be most clearly established; otherwise it does not exist. Whenever interpretation is required by a contract, it should be given in the sense of freedom; or, in other words, exclusive of privileges.

Furthermore it is to be remarked, that "the Orinoco Shipping and Trading Company, Limited, has never complied with either of the two contracts (the Olachea and the Grell contracts) particularly as refers to the latter, as evidenced by a document issued by said company, whereof a copy is herewith presented, and as evidenced also by the memorial (No. 15).

On May 10, 1900, a settlement was agreed to by the minister of internal affairs and the Orinoco Shipping and Trading Company, Limited, in virtue whereof the Government undertook to pay the company 200,000 bolivars for all its claims prior to said convention, having forthwith paid said company 100,000 bolivars; and at the same time a resolution was issued by said minister granting the Grell contract (May 26, 1894) a further extension of six years.

The company holds that the decree of October 5, 1900, annulled its contract, and also annihilated the above-mentioned prorogation; and that, as the concession of said prorogation had been the principal basis of the settlement for the company to reduce its credits to 200,000 bolivars, said credits now arise in their original amount.

It has already been proved that the referred-to Executive decree of October 5, 1900, did not annul the Grell contract, and this will suffice to evidence the unreasonableness of such contention. It must furthermore be added, that the settlement and the concession for prorogation are not the same act, nor do they appear in the same document, therefore it can not be contended that the one is a condition or stipulation of the other. Besides, the concession for prorogation accounts for itself without having to relate it to the settlement; whereas in the resolution relative to said prorogation, the company on its part, renounced its right to the subsidy of 4,000 bolivars which the Government had assigned to it in article 7 of the contract.

The Venezuelan Commissioner considers that this Commission has not jurisdiction to entertain the claims deduced by the Orinoco Steamship Company, and that in case it had, said claims ought to be disallowed.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the Orinoco Steamship Company, claim- ant,	} No. 19.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

The UMPIRE:

A difference of opinion arising between the Commissioners of the United States of North America and the United States of Venezuela, this case was duly referred to the umpire.

The umpire having fully taken into consideration the protocol, and also the documents, evidence, and arguments, and also, likewise, all other communications made by the two parties, and having impartially and carefully examined the same, has arrived at the decision embodied in the present award.

Whereas the Orinoco Steamship Company demands payment of the Government of Venezuela for four claims, as follows:

First. \$1,209,700.05 as due for damages and losses caused by the executive decree of October 5, 1900, having this decree annulled, a contract concession celebrated on May 26, 1894.

Second. 100,000 bolivars, or \$19,219.10, overdue on account of a transaction celebrated on May 10, 1900.

Third. \$149,698.71 for damages and losses sustained during the last revolution, including services rendered to the Government of the Republic.

Fourth. \$25,000 for counsel fees and expenses incurred in carrying out said claims.

And whereas the jurisdiction of this Commission in this case is questioned, this question has in the first place to be investigated and decided.

Now whereas the protocol (on which alone is based the right and the duty of this Commission to examine and decide "upon a basis of absolute equity, without regard to the objections of a technical nature or of the provisions of local legislation"), gives this Commission the right and imposes the duty to examine and decide "all claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the Commission by the Department of State of the United States or its legation at Caracas." It has to be examined in how far this claim of the Orinoco Steamship Company possesses the essential qualities to fall under the jurisdiction of this Commission.

Now, whereas this claim against the Venezuelan Government was presented to this Commission by the Department of State of the United States of America through its agent;

And whereas it has not been settled by diplomatic agreement or arbitration;

And whereas the Orinoco Steamship Company, as evidence shows, is a corporation created and existing under and by virtue of the laws of the State of New Jersey in the United States of America, there only remains to be examined if the company owns the claim brought before the Commission.

Now, whereas almost all the items of this claim—at all events those originated before the 1st of April, 1902—are claims that the Orinoco Shipping and Trading Company, Limited, an English corporation, pretended to have against the Government of Venezuela;

And whereas on the said April 1, 1902, the said English company for the sum of \$1,000,000 sold and transferred to the American company, the claimant, "all its claims and demands either against the Government of Venezuela or against individuals, firms, and corporations," these claims from that date *prima facie* show themselves as owned by the claimant.

Whereas, further on, it is true that according to the admitted and practiced rule of international law, in perfect accordance with the general principles of justice and perfect equity, claims do not change

nationality by the fact that their consecutive owners have a different citizenship, because a state is not a claim agent, but only, as the infliction of a wrong upon its citizens is an injury to the state itself, it may secure redress for the injury done to its citizens, and not for the injury done to the citizens of another state, still this rule may be overseen or even purposely set aside by a treaty; and as the protocol does not speak, as is generally done in such cases, of all claims of citizens, etc., which would rightly be interpreted "all claims for *injury done to citizens*," etc., but uses the unusual expression "all claims *owned* by citizens" it must be held that this uncommon expression was not used without a determined reason;

And whereas the evidence shows that the Department of State of the United States of America knew about these claims and took great interest in them (as is shown by the diplomatic correspondence about these claims, presented to the Commission in behalf of claimant), and that the plenipotentiary of Venezuela a short time before the signing of the protocol, in his character of United States envoy extraordinary and minister plenipotentiary, had corresponded with his Government about these claims, and that even as late as December 20, 1902, and January 27, 1903, one of the directors of the claimant company, J. Van Vechten Olcott, wrote about these claims in view of the event of arbitration to the President of the United States of America, it is not to be accepted that the high contracting parties, anxious, as is shown by the history of the protocol, to set aside and to settle all questions about claims not yet settled between them, should have forgotten these very important claims when the protocol was redacted and signed.

And therefore it may safely be understood that it was the aim of the high contracting parties that claims as these, being at the moment of the signing of the protocol owned by citizens of the United States of North America, should fall under the jurisdiction of the Commission instituted to investigate and decide upon the claims the high contracting parties wished to see settled.

And therefore the jurisdiction of this Commission to investigate and decide claims owned by citizens of the United States of North America at the moment of the signing of the protocol has to be recognized, without prejudice, naturally, of the judicial power of the Commission and its duty to decide upon a basis of absolute equity when judging about the rights the transfer of the ownership might give to claimant against third parties.

For all which reasons the claims presented to this Commission on behalf of the American company, the Orinoco Steamship Company, have to be investigated by this Commission and a decision has to be given as to the right of the claimant company to claim what it does claim, and as to the duty of the Venezuelan Government to grant to the claimant company what this company claims for.

Now, as the claimant company in the first place claims for \$1,209,700.05 as due for damages and losses caused by the Executive decree of October 5, 1900, having this decree annulled, a contract concession celebrated on May 26, 1894, this contract concession and this decree have to be examined and it has to be investigated:

Whether this decree annulled the contract concession;

Whether this annulment, when stated, caused damages and losses;

Whether the Government of Venezuela is liable for those damages and losses;

And, in the case of this liability being proved, whether it is to claimant the Government of Venezuela is liable to for these damages and losses.

And whereas the mentioned contract concession (a contract with Mr. Ellis Grell, transferred to the Venezuelan citizen Manuel A. Sanchez, and approved by Congress of the United States of Venezuela on the 26th of May, 1894) reads as follows:

The Congress of the United States of Venezuela, in view of the contract celebrated in this city on the 17th of January of the present year between the minister of the interior of the United States of Venezuela duly authorized by the chief of the National Executive on the one part; and on the other, Edgar Peter Ganteaume, attorney for Ellis Grell, transferred to the citizen Manuel A. Sanchez, and the additional article of the same contract dated 10th of May instant, the tenor of which is as follows:

Dr. Feliciano Acovedo, minister of the interior of the United States of Venezuela, duly authorized by the chief of the National Executive on the one part; and Edgar Peter Ganteaume, attorney for Ellis Grell, and in the latter's name and representation who is resident in Port of Spain, on the other part, and with the affirmative vote of the Government council have celebrated a contract set out in the following articles:

ART. 1. Ellis Grell undertakes to establish and maintain in force navigation by steamers between Ciudad Bolivar and Maracaibo within the term of six months reckoned from the date of this contract, and in such manner that at least one journey per fortnight be made touching at the ports of La Vela, Puerto Cabello, La Guaira, Guanta, Puerto Sucre, and Carupano, with power to extend the line to any duly established port of the Republic.

ART. 2. The steamers shall navigate under the Venezuelan flag.

ART. 3. The contractor undertakes to transport free of charge the packages of mails which may be placed on board the steamers by the authorities and merchants through the ordinary post-offices; the steamers thereby acquiring the character of mail steamers, and as such exonerated from all national dues.

ART. 4. The contractor shall draw up a tariff of passages and freights by agreement with the Government.

ART. 5. The company shall receive on board each steamer a government employé with the character of fiscal postmaster, nominated by the minister of finance, with the object of looking after the proper treatment of the mails and other fiscal interests.

The company shall also transport public employés when in commission of the government at half the price of the tariff, provided always that they produce an order signed by the minister of finance or by one of the presidents of the states. Military men on service and troops shall be carried for the fourth part of the tariff rates. The company undertakes also to carry, gratis, materials of war, and at half freights all other goods which may be shipped for account and by order of the National Government.

ART. 6. The General Government undertakes to concede to no other line of steamers any of the benefits, concessions, and exemptions contained in the present contract as compensation for the services which the company undertakes to render as well to national interests as those of private individuals.

ART. 7. The Government of Venezuela will pay to the contractor a monthly subsidy of four thousand bolivars (4,000) so long as the conditions of the present contract are duly carried out.

ART. 8. The National Government undertakes to exonerate from payment of import duties all machinery, tools, and accessories which may be imported for the use of the steamers, and all other materials necessary for their repair, and also undertakes to permit the steamers to supply themselves with coal and provisions, etc., in the ports of Curaçao and Trinidad.

ART. 9. The company shall have the right to cut from the national forests wood for the construction of steamers or necessary buildings and for fuel for the steamers of the line.

ART. 10. The officers and crews of the steamers, as also the woodcutters and all other employés of the company, shall be exempt from military service except in cases of international war.

ART. 11. The steamers of the company shall enjoy in all the ports of the Republic the same freedom and preferences by law established as are enjoyed by the steamers of lines established with fixed itinerary.

ART. 12. While the government fixes definitely the transshipment ports for merchandise from abroad, and while they are making the necessary instalations, the steamers of this line shall be allowed to call at the ports of Curaçao and Trinidad, and any one of the steamers leaving Trinidad may also navigate by the channels of the Macareo and Pedernales of the River Orinoco in conformity with the formalities which by special resolution may be imposed by the minister of finance in order to prevent contraband, and to safeguard fiscal interests; to all which conditions the contractor agrees beforehand.

ART. 13. This contract shall remain in force for fifteen years, reckoned from the date of its approbation, and may be transferred by the contractor to another person or corporation upon previous notice to the Government.

ART. 14. Disputes and controversies which may arise with regard to the interpretation or execution of this contract shall be resolved by the tribunals of the Republic in accordance with the laws of the nation, and shall not in any case be considered as a motive for international reclamations.

Two copies of this contract, of the same tenor and effect, were made in Caracas the seventeenth day of January, 1894.

(S'g'd.)	EDWARD P. CANTEAUME.
(S'g'd.)	SOLICIANO ACOVADO.

ADDITIONAL ARTICLE. Between the minister of the interior of the United States of Venezuela and Citizen Manuel A. Sanchez, concessionaire of Mr. Ellis Grell, have agreed to modify the eighth article of the contract made on the 17th day of January, of the present year, for the coastal navigation between Ciudad Bolivar and Maracaibo on the following terms.

ART. 8. The Government undertakes to exonerate from payment of import duties the machinery, tools, and articles which may be imported for the steamers, and all other materials destined for the repairs of the steamers; while the Government fixes the points of transport and coaling ports, the contractor is hereby permitted to take coal and provisions for the crew in the ports of Curaçao and Trinidad.

(S'g'd.)	JOSE R. NUÑEZ.
(S'g'd.)	M. A. SANCHEZ.

CARACAS, 10th May, 1894.

And whereas the mentioned Executive decree of October 5, 1900, reads as follows:

DECREE.

ARTICLE 1. The decree of the 1st of July, 1893, which prohibited the free navigation of the Macareo, Pedernales, and other navigable waterways of the River Orinoco is abolished.

ART. 2. The minister of interior relations is charged with the execution of the present decree.

Now, whereas, in regard to the said contract it has to be remarked that in almost all the arguments, documents, memorials, etc., presented on behalf of the claimant it is designed as a concession for the exclusive navigation of the Orinoco River by the Macareo or Pedernales channels, whilst in claimants' memorial it is even said that the chief, and, indeed, only value of this contract was the exclusive right to navigate the Macareo and Pedernales channels of the River Orinoco, and that, according to claimant, this concession of exclusive right was annulled by the aforesaid decree, and that it is for the losses, that were the consequence of the annulment of this concession of exclusive right, that damages were claimed, the main question to be examined is whether the Venezuelan Government by said contract gave a concession for the exclusive navigation of said channels of said river, and whether this concession of exclusive navigation was annulled by said decree.

And, whereas, the contract shows that Ellis Grell (the original contractor) pledged himself to establish and maintain in force navigation by steamers between Ciudad Bolivar and Maracaibo, touching at the

ports of La Vela, Puerto Cabello, La Guaira, Guanta, Puerto Sucre, and Carupano, and to fulfill the conditions mentioned in articles 2, 3, 4, and 5 whilst the Venezuelan Government promised to grant to Grell the benefits, concessions and exemptions outlined in articles 7, 8, 9, 11, and 12, and in article 6 pledges itself to concede to no other line of steamers any of the benefits, concessions, and exemptions contained in the contract, the main object of the contract appears to be the assurance of a regular communication by steamer from Ciudad Bolivar to Maracaibo touching the duly established Venezuelan ports between these two cities. For the navigation between these duly established ports no concession or permission was wanted; but in compensation to Grell's engagement to establish and maintain in force for fifteen years (art. 13) this communication, the Venezuelan Government accorded him some privileges, which it undertook to grant to no other line of steamers.

Whereas, therefore, this contract in the whole does not show itself as a concession for exclusive navigation of any waters, but as a contract to establish a regular communication by steamers between the duly established principal ports of the Republic, the pretended concession for exclusive navigation of the Macareo and Pedernales channels must be sought in article 12 of the contract, the only article in the whole contract in which mention of them is made.

And whereas this article in the English version in claimant's memorial reads as follows:

While the Government fixes definitely the transshipment ports for merchandise from abroad, and *while* they are making the necessary installations, the steamers of this line shall be allowed to call at the ports of Curaçao and Trinidad, and any one of the steamers leaving Trinidad may also navigate by the channels of the Macareo and Pedernales of the River Orinoco, etc.

It seems clear that the permission in this article—by which article the permission of navigating the said channels was not given to the claimant in general terms and for all its ships indiscriminately, but only for the ships leaving Trinidad—would only have force for the time till the Government would have fixed definitely the transshipment ports, *which it might do at any moment*, and till the necessary installations were made, and not for the whole term of the contract, which, according to article 13, would remain in force for fifteen years.

And whereas this seems clear when reading the English version of the contract as cited in the memorial, it seems, if possible, still more evident when reading the original Spanish text of this article, of which the above-mentioned English version gives not a quite correct translation, from which Spanish text, reading as follows:

ART. 12. Mientras el Gobierno fija definitivamente los puertos de trasbordo para las mercancías procedentes del extranjero, y mientras bajo las necesarias instalaciones, los será permitido á los buques de la línea, tocar en los puertos de Curacho y de Trinidad, pudiendo además navegar el vapor que salga de la última antilla por los caños de Macareo y de Pedernales del Rio Orinoco, previas las formalidades que por resolución especial dictará el Ministerio de Hacienda para impedir el contrabando en resguardo de los intereses fiscales, y á las cuales de antemano so somete el contratista.

The words, "el vapor que salga de la última antilla," being given in the English version as "*any one* of the steamers leaving Trinidad," it can not be misunderstood that this "el vapor" is the steamer that had called at Trinidad according to the permission given for the special term that the "while" ("mientras") would last; wherefor it seems

impossible that the permission given in article 12 only for the time there would exist circumstances which the other party might change at any moment, could ever have been the main object, and, as is stated in the memorial, "the chief and, indeed, only value" of a contract that was first made for the term of fifteen years, which term later on even was prolonged to twenty-one years.

And whereas, therefore, it can not be seen how this contract concession for establishing and maintaining in force *for fifteen years* a communication between the duly established ports of Venezuela can be called a concession for the exclusive navigation of the said channels, when the permission to navigate these channels was only annexed to the permission to call at Trinidad and would end with that permission, whilst the obligation to navigate between the ports of Venezuela from Ciudad Bolivar to Maracaibo would last.

And whereas on the contrary all the stipulations of the contract are quite clear when holding in view the purpose why it was given, viz, to establish and maintain in force a communication between the duly established ports of Venezuela—i. e., a regular coastal service, by steamers, because to have and retain the character and the rights of ships bound to coastal service it was necessary that the ships should navigate under Venezuelan flag (art. 2), that they should have a special permission to call at Curaçao and Trinidad to supply themselves with coal and provisions (art. 8)—which stipulation otherwise would seem without meaning and quite absurd, as no ship wants a special permission of any Government to call at the ports of another Government—and to call at the same foreign ports for transshipment while the Government fixed definitely the transshipment ports (art. 12), in the same way, *during that time*, a special permission was necessary for the ship leaving Trinidad to hold and retain this one right of ships bound to coastal service, to navigate by the channels of Macareo and Pedernales, which special permission would not be necessitated any longer as soon as the Government would fix definitely the Venezuelan ports that would serve as transshipment ports, because then they would *per se* enjoy the right of all ships bound to coastal service, viz, to navigate through the mentioned channels. What is called a concession for exclusive navigation of the mentioned channels is shown to be nothing but a permission to navigate these channels as long as certain circumstances should exist.

And whereas, therefore, the contract approved by decree of the 8th of June, 1894, never was a concession for the exclusive navigation of said channels of the Orinoco, and whereas the decree which reopened these channels for free navigation could not annul a contract that never existed, all damages claimed for the annulling of a concession for exclusive navigation of the Macareo and Pedernales channels of the Orinoco River must be disallowed.

Now, whereas, it might be asked, if the permission to navigate by those channels, given to the steamer that on its coastal trip left Trinidad, was not one of the "benefits, concessions, and exemptions" that the Government in article 6 promised not to concede to any other line of steamers; it has not to be forgotten that in article 12 the Government did not give a general permission to navigate by the said channels, but that this whole article is a temporal measure taken to save the character and the rights of coastal service, to the service which was the object of this contract, during the time the Government had not

definitely fixed the transshipment ports; and that it was not an elementary part of the concession, that would last as long as the concession itself, but a mere arrangement by which temporarily the right of vessels bound to coastal service, viz, to navigate said channels, would be safeguarded for the vessel that left Trinidad as long as the vessels of this service would be obliged to call at this island, and that therefore the benefit and the exemption granted by this article was not *to navigate by said channels*, but *to hold the character and right of a coastal vessel notwithstanding having called at the foreign port of Trinidad*, and as this privilege was not affected by the reopening of the channels to free navigation, and the Government by aforesaid decree did not give any benefit, concession, and exemption granted by this concession to any other line of steamers, a claim for damages for the reopening of the channels based on article 6 can not be allowed. It may be that the concessionary and his successors thought that during all the twenty-one years of this concession the Government of Venezuela would not definitely fix the transshipment ports, nor reopen the channels to free navigation, and those thoughts based a hope that was not fulfilled and formed a plan that did not succeed; but it would be a strange appliance of absolute equity, to make the Government that grants a concession liable for the not realized dreams and vanished "*chateaux en Espagne*" of inventors, promoters, solicitors, and purchasers of concessions.

But further on, even when it might be admitted that the reopening of the channels to free navigation might furnish a ground to base a claim on (*quod non*) whilst investigating the right of claimant and the liability of the Venezuelan Government, it has not to be forgotten that besides the already mentioned articles the contract has another article, viz, article 14, by which the concessionary pledged himself not to submit any dispute or controversies which might arise with regard to the interpretation or execution of this contract to any other tribunal but to the tribunals of the Republic, and in no case to consider these disputes and controversies a motive for international reclamation; which article, as the evidence shows, was repeatedly disregarded and trespassed upon by asking and urging the intervention of the English and United States Governments without ever going for a decision to the tribunals of Venezuela; and as the unwillingness to comply with this pledged duty is clearly shown by the fact that the English Government called party's attention to this article, and, quoting the article, added the following words, which certainly indicated the only just point of view from which such pledges should be regarded:

Although the general international rights of His Majesty's Government are in nowise modified by the provisions of this document to which they were not a party the fact that the company have so far as lay in their power deliberately contracted themselves out of every remedial recourse in case of dispute, except that which is specified in article 14 of the contract, is undoubtedly an element to be taken into serious consideration when they subsequently appeal for the intervention of His Majesty's Government.

And whereas the force of this sentence is certainly in nowise weakened by the remark made against it on the side of the concessionary that "the terms of article 14 of the contract have absolutely no connection whatever with the matter at issue, because "no doubt or controversy has arisen with respect to the *interpretation and execution* of the contract," but that what has happened is this, that the Venezuelan Government has, by a most dishonest and cunningly devised trick,

defrauded the company to the extent of *entirely nullifying* a concession which it had legally acquired at a very heavy cost," whereas, on the contrary, it is quite clear that the only question at issue was whether, in article 12 in connection with article 6, a concession for exclusive navigation was given or not—ergo, a question of doubt and controversy about the interpretation.

And whereas the following words of the English Government, addressed to the concessionary, may well be considered: "The company does not appear to have exhausted the legal remedies at their disposal before the ordinary tribunals of the country, and it would be contrary to international practice for His Majesty's Government formally to intervene in their behalf through the diplomatic channel unless and until they should be in a position to show that they had exhausted their ordinary legal remedies with a result that a *prima facie* case of failure or denial of justice remained."

For whereas, if in general this is the only just standpoint from which to view the right to ask and to grant the means of diplomatic intervention and in consequence *casu quo* of arbitration, how much the more where the recourse to the tribunals of the country was formally pledged and the right to ask for intervention solemnly renounced by contract, and where this breach of promise was formally pointed to by the Government whose intervention was asked; whereas, therefore, the question imposes itself, whether absolute equity ever would permit that a contract be willingly and purposely trespassed upon by one party in view to force its binding power on the other party;

And whereas it has to be admitted that, even if the trick to change a contract for regular coastal service into a concession for exclusive navigation succeeded (*quod non*), in the face of absolute equity the trick of making the same contract a chain for one party and a screw press for the other never can have success. It must be concluded that article 14 of the contract disables the contracting parties to base a claim on this contract before any other tribunal than that which they have freely and deliberately chosen, and to parties in such a contract must be applied the words of the Hon. Mr. Finlay, United States Commissioner in the Claims Commission of 1889, "So they have made their bed and so they must lay in it."

But there is still more to consider.

For whereas it appears that the contract originally passed with Crell was legally transferred to Sanches and later on to the English company, "The Orinoco Shipping and Trading Company, Limited, and on the 1st day of April, 1902, was sold by this company to the American company, the claimant;

But whereas article 13 of the contract says that it might be transferred to another person or corporation *upon previous notice* to the Government, while the evidence shows that this notice has not been previously (indeed ever) given; the condition on which the contract might be transferred not being fulfilled, the "Orinoco Shipping and Trading Company, Limited," had no right to transfer it, and this transfer of the contract without previous notice must be regarded as null and utterly worthless;

Wherefore even if the contract might give a ground to the above-examined claim to "The Orinoco Shipping and Trading Company, Limited," (once more, *quod non*), the claimant company as quite alien to the contract could certainly never base a claim on it.

For all which reasons every claim of the Orinoco Steamship Company against the Republic of the United States of Venezuela for the annulment of a concession for the exclusive navigation of the Macareo and Federnales channels of the Orinoco has to be disallowed.

As for the claim for 100,000 bolivars or \$19,219.19 overdue on a transaction celebrated on May 10, 1900, between the Orinoco Shipping and Trading Company, Limited, and the Venezuelan Government;

Whereas these 100,000 bolivars are these mentioned in letter *b* of article 2 of said contract, reading as follows:

(*b*) One hundred thousand bolivars (100,000) which shall be paid in accordance with such arrangements as the parties hereto may agree upon on the day stipulated in the decree twenty-third of April, ultimo, relative to claims arising from damages caused during the war, or by other cause whatsoever;

And whereas nothing whatever of any arrangement, in accordance with which it was stipulated to pay, appears in the evidence before the Commission, it might be asked if, on the day this claim was filed, this indebtedness was proved compellable;

Whereas, further on, in which ever way this question may be decided, the contract has an article 4, in which the contracting parties pledged themselves to the following: "All doubts and controversies which may arise with respect to the interpretation and the execution of this contract shall be decided by the tribunals of Venezuela and in conformity with the laws of the Republic, without such mode of settlement being considered motive of international claims," while it is shown in the diplomatic correspondence brought before the Commission on behalf of claimant, that in December, 1902, a formal petition to make it international claim was directed to the Government of the United States of America without the question having been brought before the tribunals of Venezuela, which fact certainly constitutes a flagrant breach of the contract on which the claim was based;

And whereas, in addition to everything that was said about such clauses here above, it has to be considered what is the real meaning of such a stipulation;

And whereas when parties agree that doubts, disputes, and controversies shall only be decided by a certain designated third, they implicitly agree to recognize that there properly shall be no claim from one party against the other but for what is due as a result of a decision on any doubts, disputes, or controversies by that one designated third;

For which reason, in addition to everything that was said already upon this question heretofore, in questions on claims based on a contract wherein such a stipulation is made, absolute equity does not allow to recognize such a claim between such parties before the conditions are realized, which in that contract they themselves made *conditones sine quo non* for the existence of a claim;

And whereas, further on, even in the case the contract did not contain such a clause, and that the arrangements, in accordance to which it was stipulated to pay were communicated to and proved before this Commission, it ought to be considered that if there existed here a recognized and compellable indebtedness, it would be a debt of the Government of Venezuela to the Orinoco Shipping and Trading Company;

For whereas it is true that evidence shows that on the 1st of April, 1902, all the credits of that company were transferred to the claimant

company, it is not less true that, as showed by evidence, this transfer was never notified to the Government of Venezuela;

And whereas, according to Venezuelan law, in perfect accordance with the principles of justice and equity recognized and proclaimed in the codes of almost all civilized nations, such a transfer gives no right against the debtor when it was not notified to or accepted by that debtor;

And whereas here it can not be objected that according to the protocol no regard has to be taken of provisions of local legislation, because the words "the commissioners or in case of their disagreement the umpire shall decide all claims upon a basis of absolute equity, without regard to *objections* of a technical nature or of the provisions of local legislation," clearly have to be understood in the way that questions of technical nature or the provisions of local legislation should not be taken into regard when they were *objections* against the rules of absolute equity, for in case of any other interpretation the fulfilling of the task of this Commission would be an impossibility, as the question of American citizenship could never be proved without regard to the local legislation of the United States of America, and this being prohibited by the protocol all claims would have to be disallowed, as the American citizenship of the claimant would not be proved; and as to technical questions it might then be maintained (as was done in one of the papers brought before this Commission on behalf of a claimant in one of the filed claims) that the question whether there was a *proof* that claimant had a right to a claim was a mere technical question;

And whereas, if the provisions of local legislation far from being objections to the rules of absolute equity are quite in conformity with those rules, it would seem absolutely in contradiction with this equity not to apply its rules, because they were recognized and proclaimed by the local legislation of Venezuela;

And whereas the transfer of credits from "The Orinoco Shipping and Trading Company" to "The Orinoco Steamship Company" neither was notified to or accepted by the Venezuelan Government, it can not give a right to a claim on behalf of the last-named company against the Government of Venezuela; for all which reasons the claim of the Orinoco Steamship Company, Limited, against the Government of Venezuela, based on the transaction of May 10, 1900, has to be disallowed.

In the next place the company claims \$147,038.79, at which sum it estimates the damages and losses sustained during the last revolution, including services rendered to the Government of Venezuela;

Now, whereas this claim is for damages and losses suffered and for services rendered from June, 1900, while the existence of the company only dates from January 31, 1902, and the transfer of the credits of the Orinoco Shipping and Trading Company, Limited, to claimant took place on the 1st of April of this same year, it is clear from what heretofore was said about the transfer of these credits that all items of this claim based on obligations originated before said April 1, 1902, and claimed by claimant as indebtedness to the afore-named company and transferred to claimant on said April 1, have to be disallowed, as the transfer was never notified to or accepted by the Venezuelan Government. As to the items dating after the 1st of April, 1902, in the first place the claimant claims for detention and hire of the steamships *Masparro* from May 1 to September 18, 1902 (141 days), at 100 pesos daily, 14,000 pesos, and for detention and

hire of the steamship *Socorro* from March 21 to November 5, 1902 (229 days), 22,900 pesos, together 37,000 pesos, equal to \$28,461.55,

And whereas it is proved by evidence that said steamers have been in service of the National Government for the time above stated;

And whereas nothing in the evidence shows any obligation on the part of the owners of the steamers to give this service gratis, even if it were in behalf of the Commonwealth;

Whereas therefore a remuneration for that service is due to the owners of these steamers, the Venezuelan Government owes a remuneration for that service to the owners of the steamers;

And whereas these steamers, by contract of April 1, 1902, were bought by claimant and claimant therefore from that day was owner of the steamers, this remuneration from that date is due to claimant;

And whereas in this case it differs not that the transfer of the steamers was not notified to the Venezuelan Government, as it was no transfer of a credit, but as the credit was born after the transfer, and as it was not in consequence of a contract between the Government and any particular person or company, but, as evidence shows, because the Government wanted the steamer's service in the interest of its cause against revolutionary forces, and whereas for this forced detention damages are due, those damages may be claimed by him who suffered them, in this case the owners of the steamers;

And whereas the argument of the Venezuelan Government that it had counterclaims can in nowise affect this claim, as those counterclaims the Venezuelan Government alludes to and which it pursues before the tribunals of the country, appear to be claims against the Orinoco Shipping and Trading Company and not against claimant;

And whereas it differs not whether claimant—as the Government affirms and as evidence seems clearly to show—if not taking part in the revolution, at all events favored the revolutionary party, because the ships were not taken and confiscated as hostile ships, but were claimed by the Government, evidence shows, because it wanted them for the use of political interest, and after that use were returned to the owners; for all these reasons there is due to claimant from the side of the Venezuelan Government a remuneration for the service of the steamer *Masparro* and *Socorro*, respectively, from May 1 to September 18, 1902 (141 days), and from April 1 to November 5, 1902 (219 days), together 360 days;

And whereas, according to evidence, since 1894 these steamers might be hired by the Government for the price of 400 bolivars, or 100 pesos, daily, this price seems a fair award for the forced detention; wherefore for the detention and use of the steamers *Masparro* and *Socorro* the Venezuelan Government owes to claimant 36,000 pesos, or \$27,692.31.

Further on claimant claims \$2,520.50 for repairs to the *Masparro* and \$2,932.98 for repairs to the *Socorro*, necessitated, as claimant assures, by the ill usage of the vessels while in the hands of the Venezuelan Government.

Now, whereas evidence only shows that after being returned to claimant the steamers required repairs at this cost, but in nowise that those repairs were necessitated by ill usage on the side of the Government;

And whereas evidence does not show in which state they were received and in which state they were returned to the Government;

And whereas it is not proved that in consequence of this use by the

Government they suffered more damages than those that are the consequence of common and lawful use during the time they were used by the Government, for which damages in case of hire the Government would not be responsible.

Where the price for which the steamers might be hired is allowed for the use, while no extraordinary damages are proved, equity will not allow to declare the Venezuelan Government liable for these repairs; wherefore this item of the claim has to be disallowed.

Evidence in the next place shows that on May 29 and May 31, 1902, 20 bags of rice, 10 barrels potatoes, 10 barrels onions, 16 tins lard, and 2 tons coal were delivered to the Venezuelan authorities on their demand on behalf of the Government forces, and for these provisions, as expropriation for public benefit, the Venezuelan Government will have to pay.

And whereas the prizes that are claimed, viz, \$6 for a bag of rice, \$5 for a barrel potatoes, \$7 for a barrel onions, \$3 for a tin lard, and \$10 for a ton coal, when compared with the market prices at Caracas, do not seem unreasonable, the sum of \$308 will have to be paid for them.

As for the further \$106.60 claimed for provisions and ship stores, whereas there is given no proof of these provisions and stores being taken by or delivered to the Government, they can not be allowed.

For passages since April 1, 1902, claimant claims \$224.62, and whereas evidence shows that all these passages were given on request of the Government, the claim has to be admitted, and whereas the prices charged are the same that formerly could be charged by the Orinoco Shipping and Trading Company, these prices seem equitable; wherefore the Venezuelan Government will have to pay on this item the sum of \$224.62.

As to the expenses caused by stoppage of the steamer *Bolivar* at San Felix when Ciudad Bolivar fell in the hands of the revolution;

Whereas this stoppage was necessitated in behalf of the defense of the Government against revolution;

And whereas no unlawful act was done nor any obligatory act was neglected by the Government, this stoppage has to be regarded—as every stoppage of commerce, industry, and communication during war and revolution—as a common calamity that must be commonly suffered and for which Government can not be proclaimed liable, wherefore this item of the claim has to be disallowed.

And now, as for the claim of \$61,336.20 for losses of revenue from June to November, 1902, caused by the blockade of the Orinoco;

Whereas a blockade is the occupation of a belligerent party on land and on sea of all the surroundings of a fortress, a port, a roadstead, and even all the coasts of *its enemy*, in order to prevent all communication with the exterior, with the right of “*transient*” occupation until it puts itself into real possession of that part of the hostile territory, the act of forbidding and preventing the entrance of a port or a river on *own territory* in order to secure internal peace and to prevent communication with the place occupied by rebels or a revolutionary party can not properly be named a blockade, and would only be a blockade when the rebels and revolutionists were recognized as a belligerent party;

And whereas in absolute equity things should be judged by what they are, and not by what they are called, such a prohibitive measure

on own territory can not be compared with blockade of a hostile place, and therefor the same rules can not be adopted;

And whereas the right to open and close, as a sovereign on its own territory, certain harbors, ports, and rivers in order to prevent the transpassing of fiscal laws is not and could not be denied to the Venezuelan Government, much the less this right can be denied when used in defense not only of some fiscal rights, but in defense of the very existence of the Government;

And whereas the temporary closing of the Orinoco River (the so-called "blockade") in reality was only a prohibition to navigate that river in order to prevent communication with the revolutionists in Ciudad Bolivar and on the shores of the river, this lawful act by itself could never give a right to claims for damages to the ships that used to navigate the river;

But whereas claimant does not found the claim on the closure itself of the Orinoco River, but on the fact, that notwithstanding this prohibition, other ships were allowed to navigate its waters and were dispatched for their trips by the Venezuelan consul, at Trinidad, whilst this was refused to claimant's ships, which fact, in the brief on behalf of the claimant, is called "unlawful discrimination in the affairs of neutrals," it must be considered that;

Whereas the revolutionists were not recognized belligerents there can not properly here be spoken of "neutrals" and "the rights of neutrals," but that;

Whereas it here properly was a prohibition to navigate;

And whereas where anything is prohibited, to him who held and used the right to prohibit can not be denied the right to permit in certain circumstances what as a rule is forbidden, the Venezuelan Government, which prohibited the navigation of the Orinoco, could allow that navigation when it thought proper, and only evidenced unlawful discrimination, resulting in damages to third could make this permission a basis for a claim to third parties;

Now, whereas the aim of this prohibitive measure was to crush the rebels and revolutionists, or at least to prevent their being enforced, of course the permission that exempted from the prohibition might always be given, where the use of the permission, far from endangering the aim of the prohibition, would tend to that same aim, as, for instance, in the case that the permission were given to strengthen the governmental forces or to provide in the necessities of the loyal part of the population;

And whereas the inculcation of unlawful discrimination ought to be proved;

And where on one side it not only is not proved by evidence that the ships cleared by the Venezuelan consul during the period in question did not receive the permission to navigate the Orinoco in view of one of the aforesaid aims;

But whereas on the other side, evidence, as was said before, shows that the Government had sufficient reasons to believe claimant, if not assisting the revolutionists, at least to be friendly and rather partial to them, it can not be recognized as a proof of unlawful discrimination, that the Government, holding in view the aim of the prohibition, and defending with all lawful measures its own existence, did not give to claimant the permission it thought fit to give to the above-mentioned ships;

And whereas, therefore, no unlawful act or culpable negligence on the part of the Venezuelan Government is proved, that would make the Government liable for the damages claimant pretends to have suffered by the interruption of the navigation of the Orinoco River, this item of the claim has to be disallowed.

The last item of this claim is for \$25,000, for counsel fees and expenses incurred in carrying out the above-examined and decided claim;

But whereas the greater part of the items of the claim had to be disallowed;

And whereas in respect to these that were allowed, it is in no way proved by evidence that they were presented to and refused by the Government of the Republic of the United States of Venezuela, and whereas, therefore, the necessity to incur those fees and further expenses in consequence of an unlawful act or culpable negligence of the Venezuelan Government is not proved, this item has, of course, to be disallowed.

For all which reasons the Venezuelan Government owes to claimant:

	U. S. gold.
For detention and use of the steamers <i>Masparro</i> and <i>Socorro</i> , 36,000 pesos, or.....	\$27, 692. 31
For goods delivered for use of the Government.....	308. 00
For passages.....	224. 62
Together, total.....	28, 224. 93

While all the other items have to be disallowed.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of the United States of America, on behalf of the Orinoco Steamship Company, claimant, against the Republic of Venezuela, No. 19, the sum of twenty-eight thousand two hundred and twenty-four dollars and ninety-three cents (\$28,224.93), United States gold, is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

HARRY BARGE, *Umpire*.

Attest:

EDUARDO CALCAÑO LANAORIA,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered February 20, 1904.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Frances Irene Roberts, administratrix of the estate and sole heir at law of William Quirk, deceased, claimant,	} No. 20.
v.	

THE REPUBLIC OF VENEZUELA.

BRIEF ON BEHALF OF THE UNITED STATES.

I.

STATEMENT OF FACT.

The United States in this case presents the claim of Frances Irene Roberts, administratrix and sole heir at law of William Quirk, deceased, for damages in the sum of \$187,168.03.

The claim arose in April, 1871, in favor of William Quirk, since deceased, who was a native-born citizen of the State of South Carolina, of the United States of America.

Mr. William Quirk, in April, 1871, and for a year or two prior thereto, had been operating under a lease a plantation of about a thousand acres in the State of Aragua, which plantation he had cleared, drained, and otherwise equipped with implements and machinery for the raising of cotton and ginning and preparing the same for market, and at the time of the occurrences complained of he was the owner of a lease of this plantation and of all the personal property and crop thereon situated.

On the 19th of April, 1871, a body of regular soldiers of the Venezuelan Government came to the plantation, broke into the dwelling house and stables, and drove off and took away with them all the horses, saddles, and bridles, and destroyed other property. These acts were accompanied by acts of wanton insult and personal injury, both to Mr. Quirk and his wife, and threats were made that Mr. Quirk would be killed if he remained upon the plantation.

Mr. Quirk complained to and had a personal interview with the President of the Venezuelan Republic, at that time General Blanco, and claimed his protection against General Alcantara, under whose immediate direction the outrages complained of had been committed. President Blanco stated that he could not interfere with or control General Alcantara.

By these acts of wanton outrage and their accompanying threats, and the inability of the Venezuelan Government to protect him, it became impossible for Mr. Quirk to safely continue living on or operating his plantation, and he was therefore compelled to dispose of such property as had not been destroyed, at a sacrifice, and abandon the property, with its growing crops and fixtures, which belonged to Mr. Quirk. The damages claimed consist of the value of the crop and fixed property, this amount being based upon an appraisement taken under authority of the local judge of the district; the value of the horses and mules taken; the loss upon household and other furniture; the profit that would have been made in the crop of 1871, and the indirect loss.

II.

The evidence amply supports the claim.

Accompanying the memorial filed by Mr. Quirk in his lifetime are a number of exhibits, which prove by the testimony of several witnesses, neighbors of Quirk's plantation, the exact truth of his statements as to the injuries complained of. These are followed by proof of the abandonment of the estate, the loss and value of the horses taken, and a judicial appraisal of the cotton and other property abandoned. These are followed by proper protest, filed at Caracas with the American legation, and by a certificate from General Alcantara himself, in which the facts are not denied, but the sole claim is made that the acts were done as necessary incidents of war.

That these acts of wanton injury were committed for the express purpose of expelling Mr. Quirk from the country or compelling him to leave, and of destroying and confiscating his property, is borne out by the accompanying extracts from "La Opinion Nacional," setting forth a proclamation or programme, issued on May 13, 1871, calling for the expulsion of all foreigners and confiscation of their property. Although this is of subsequent date, it clearly indicates the state of feeling at that time toward the foreigners.

The evidence is also clear that the acts complained of were not done during nor as a part of any war or revolutionary movement, but that the injury was inflicted by the regular troops of the Government under the express orders of its chiefs, and at a time when and place where the country was quiet and undisturbed.

III.

The facts of this case established by the evidence are not substantially disputed by the Venezuelan Government.

From the diplomatic correspondence which followed the presentation of this claim to the Venezuelan authorities it appears that the only substantial reason given for not recognizing and adjusting this claim was that Mr. Quirk was simply the agent of Boulton & Co., and had no right himself to the claim.

This is not, however, in any sense a denial of the facts out of which the claim arose, but merely a dispute as to whether the claimant can recover for all the property destroyed.

IV.

The claimant has a right to recover for all the damage sustained.

The position of the Government of Venezuela that Mr. Quirk was acting as the agent merely of Boulton & Co., and had no individual interest in the enterprise, is not sustained by the facts as to the relation between Boulton & Co. and Quirk. It is apparent that Boulton & Co. were merely Mr. Quirk's factors, who advanced him money to carry on the business. The relation, therefore, is one of debtor and creditor, and not principal and agent; and that the creditor received, instead of interest, a portion of the profits, makes no legal difference

in the relation. Mr. Quirk was the lessee of the plantation, and operating the same in his own name, and he is the person who was injured, both personally and in his property rights, by the injuries complained of. Whether his creditors might not have a lien upon any amount of his recovery is a question that is not before this Commission. The presumption arising from their not having made any claim is that they have no such lien.

V.

The Venezuelan Government is responsible for the injuries complained of, and for the resultant damage.

In this case the injuries complained of were committed by regular troops of the then established Government, under the conduct of their chiefs. The matter having been called to the attention of the President of the Venezuelan Republic, he took no action, and expressed himself as unable to take any action, to prevent the outrage or remedy it. The liability of the Government in such a case is very clearly established. See the opinion of the Chilean Claims Commission in Shrigley's case, and the authorities there cited. (4th Moore's International Arbitration, pp. 3711-3712.) The fundamental principle there correctly laid down is:

Neutral property destroyed or taken by soldiers of a belligerent, with authorization or in the presence of their officers or commanders, gives right to compensation whenever the fact can be proved that said officers or commanders had the means of preventing the outrage and did not make the necessary efforts to prevent it.

This would have been the rule, and it would clearly establish the liability of Venezuela if the acts complained of had been done during a state of war or revolution. Much the more does the same liability accrue from the doing of these acts when there was no state of war or revolution to necessitate them. See also pages 2952-2953 of the third volume of Moore's International Arbitration and the authorities there cited, which clearly sustain the liability of the Government for such wanton acts and outrages when the matter is called to the attention of the Government, and it either can not or will not redress or prevent the matter.

The right of the claimant to relief can be further founded upon the well known doctrine that where a foreigner is expelled and forced to leave the country, abandoning his property and investments, he is entitled to an award against the expelling Government for the value of the property lost. See the cases collated in the fourth volume of Moore's International Arbitration, page 3339, et seq. There can be no pretense in this case of anything in the conduct of Mr. Quirk furnishing an excuse for such procedure.

VI.

An award should be made for the amount claimed.

It being clear that the acts complained of were acts of wanton and uncalled for injury to an American citizen, committed by officers of the Venezuelan Government, or under their orders, not repressed or even disowned by the chief authorities of that Government, it follows

necessarily that the claimant is entitled to an award. In this case the evidence as to the value of the property destroyed and the consequent loss is clear, and an award should be made for the full amount claimed.

Respectfully submitted

ROBERT C. MORRIS,
Agent of the United States.

FRANCES IRENE ROBERTS, ADMINISTRATRIX AND sole heir of the estate of William Quirk, claimant,	} Claim, No. 20.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

ANSWER.

Honorable members of the Mixed Venezuelan-American Commission:

The undersigned, agent of the United States of Venezuela, has studied the claim presented by Frances Irene Roberts, in her character of administratrix and sole heir of the estate of William Quirk, and respectfully shows to the tribunal:

The claim arises from damages caused to Mr. William Quirk by Venezuelan soldiers during the year 1871. The undersigned considers the facts which give rise to the claim sufficiently proved to be prejudicial and he does not therefore attempt to contradict them; but he has to present for the consideration of the honorable arbitrators the following points of law:

(1) It does not appear by the proof adduced that the Venezuelan soldiers who caused the injury to the interests of the original claimant obeyed orders of their superior officers, nor that the latter could have prevented the injury. The responsibility of the authors of the deed ought therefore to have first been followed up. Such is the accepted doctrine of international law.

To pretend that a government charged with the fulfillment of duties so numerous and complicated at every moment and with such mechanical precision could, in the cases in which there does not exist any judicial recourse, be constrained by diplomatic intervention to repair the injury caused by its functionaries, would be to sustain an excessive and unreasonable contention. (See Fiore, *Droit Int. P.*, Vol. I, p. 576.)

See also note No. 1, which speaks of the case of one Delbrouck de Limbourg, who, under the pretext that, on the 8th of August, 1845, soldiers belonging to different corps of the army of Moza had caused injuries to his property, demanded from the State the payment of 6,000 francs as indemnity. "The action for reparation on account of an injury caused by a wrongful act" said the tribunal of Brussels, "ought to be prosecuted against the author of the injury and against those who are civilly responsible for the acts which were committed by soldiers in their service." (*Trib. Civ. de Brussels*, 24 Dec., 1842; *Court of Brussels*, 23 Nov., 1843.)

(2) As appears from the contention itself of the claimant, he was nothing but a simple manager of the hacienda "Tocoron," which was the property of Messrs. Boulton. He ought, therefore, in order to fix equitably the amount of the claim, to have produced the contract which he had made and entered into with Messrs. Boulton & Co., above cited.

(3) The right to claim in the case which might have existed can be considered as barred. In fact, since the last note sent by His Excellency William A. Pyle, minister of the United States at Caracas, to the minister of foreign relations, under date of the 3d of July, 1872, this matter has not been presented to Venezuela and would probably never have been except for the abnormal circumstances which caused the celebration of the protocol signed in Washington. International law requires three prerequisites in order that prescription may be invoked as a means to extinguish a right of action:

First, that there should not have been insurmountable ignorance on the part of the one who had the right to institute the action; second, that he has been silent; and, third, that this silence can not be justified by plausible reasons, such as oppression or a justifiable fear of a grave wrong.

The present claim falls in none of the cases of exception, therefore it has been barred according to law.

Caracas, July 13, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Frances Irene Roberts, administratrix of the estate and sole heir at law of William Quirk, deceased, claimant,	} No. 20.
THE REPUBLIC OF VENEZUELA.	

REPLICATION ON BEHALF OF THE UNITED STATES.

I.

With reference to the discussion of the law by the honorable agent of Venezuela in point 1 of his answer, the United States stands upon its position taken in Point V of its brief in support of the above claim.

II.

Regarding the contention of Venezuela, set forth in point 2 in its answer to the claim, to the effect that Quirk was simply the manager of the hacienda Tocoron, and that this was the property of Messrs. Boulton & Co., we herewith submit a letter of Messrs. Boulton & Co. to Hon. William A. Pile, United States minister resident in Caracas, dated January 9, 1872, in which it is clearly set forth that Boulton & Co. were merely Mr. Quirk's factors who advanced him the necessary money to carry on his business. This is evident from the paragraph of the letter which states:

Our agreement with Mr. Quirk was to provide him with sufficient capital which, added to his own, should be sufficient to raise the crop and ship it to Liverpool, the net proceeds to be divided equally between us.

The relation, therefore, of Mr. Quirk to Boulton & Co. was merely one of debtor and creditor and not principal and agent, and because the creditor received instead of interest a portion of the profits

makes no legal difference in the relation. Mr. Quirk had invested some of his own money in addition to that advanced him by Boulton & Co., and he is the person who was damaged, both personally and in his property rights by the injuries complained of. Whether his creditors might not have a lien upon any amount of his recovery is a question that is not before this Commission. In this respect we refer to that paragraph of the brief of Messrs. Mordecai & Gadsden, the attorneys for the claimant, on page 50, in which they say:

Second. That the property so taken and destroyed was the property of William Quirk and belonged to no one else. His indebtedness to Boulton & Co. or any other person being a matter which will be settled by his administratrix in due course of administration. Any amount paid by the finding of this tribunal will pass to the administratrix as a bonded officer, and will be distributed by her as the law of the State of South Carolina directs.

III.

As to the third point in the answer of Venezuela, that the claim in this case must be considered as barred, since this matter has not been urged by the claimant for many years, we respectfully call the attention of the Commission to the fact that there has been no commission which had jurisdiction over this claim since it arose until the present time, and therefore it can not be barred. The claim is now presented to this high Commission, which has full jurisdiction over it, and an award should be made for the full amount claimed.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF OF Frances Irene Roberts, administratrix of the estate and sole heir at law of William Quirk, deceased, claimant,	} No. 20.
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THE REPUBLIC OF VENEZUELA.

DECISION AND AWARD.

Opinion by Bainbridge, Commissioner.

The Commission awards in favor of the claimant the sum of \$18,154.61 in United States gold.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF OF Frances Irene Roberts, administratrix of the estate and sole heir at law of William Quirk, deceased, claimant,	} No. 20.
v.	

THE REPUBLIC OF VENEZUELA.

BAINBRIDGE, *Commissioner:*

William Quirk, a native citizen of the United States, came to Venezuela in 1867 to engage in the business of raising sea-island cotton.

He first rented a small plantation known as "Guayabita," which he worked successfully for about eighteen months. Satisfied that the soil and climate of Venezuela were adapted to the culture of a fine quality of cotton, he succeeded in April, 1869, in interesting several merchants in Caracas, who advanced him money with the aid of which in that year he raised a profitable crop, and returned the borrowed capital with interest at 12 per cent.

In the latter part of 1869 the firm of H. L. Boulton & Co., of Caracas, contracted with Mr. Quirk to raise sea-island cotton on a larger scale. The agreement was that Boulton & Co. were to provide Quirk with sufficient capital which, added to his own, would enable them to raise the crop and ship it to Liverpool, the net proceeds to be divided equally between them. Pursuant to this agreement a part of the estate known as "Tocoron" in the State of Aragua was rented. Boulton & Co. state:

Upon this property we found nothing but a house in a very dilapidated condition and the lands most suited to us in a state of forest for the most part and the rest covered with tall grass called gambiot. The first thing we had to do was to make the house habitable for Quirk and his family, then fence in our property, cut down the forest, pluck up the gambiot by the roots, so that it should not destroy the cotton, and repair, to a certain extent sufficiently to preserve our crop, the water courses.

They brought from the United States all the necessary implements and machinery and 34 laborers familiar with the methods of cotton raising. The prospects were so favorable that Boulton & Co. finally agreed with Quirk to continue the planting of cotton for three years, two of which they were to participate in and the third to be for Quirk's sole account. On April 19, 1871, they had already taken off the principal part of the crop and were preparing to take in a second, and arrangements were entered into to plant the crop of 1872.

This was the situation when, on April 19, 1871, about 300 regular soldiers under the command of General Rodrigues and constituting part of the army of General Alcantara, the civil and military governor of the State of Aragua, came to "Tocoron," took prisoner and tied with a rope Quirk's bookkeeper; took from the stables 6 horses and a mule belonging to Quirk; entered the dwelling house which they searched; used threatening and abusive language toward Quirk and his family; compelled his wife to deliver up claimant's revolver, and then left the premises, threatening to return and kill the claimant and destroy the place. Mr. Quirk claimed the protection of his flag and besought the officer in command to desist, but was told by the latter that he was "carrying out strictly the orders of General Alcantara." After this outrage Quirk considered it unsafe for himself or his family to remain at Tocoron and he left the next day for Caracas. There he claimed the protection of the President, Gen. Guzman Blanco, who told him that he could not interfere with or control General Alcantara. Quirk then returned to Tocoron, disposed of his household furniture at a sacrifice, and brought to Caracas his machinery, farming utensils, and his American employees. An inventory and appraisal of the immovable property on the plantation was made on May 5, 1871, by order of the local court and a valuation placed thereon of 21,255 pesos. The property taken by the troops on April 19 was valued at 1,725 pesos. In June, 1871, Mr. Quirk returned with his family to the United States, where he died on May 25, 1895.

Or November 4, 1871, the Government of the United States, through

its legation at Caracas, presented to the Venezuelan Government a claim on behalf of William Quirk for the losses and injuries sustained by him as a result of the events above narrated. The claim was the subject of an extended diplomatic correspondence between the two Governments, but no settlement thereof was ever reached.

The United States now presents to this Commission, on behalf of Frances Irene Roberts, administratrix of the estate and sole heir at law of William Quirk, deceased, a claim for the crop and immovable property at Tocoron, based upon the appraisement made in May, 1871; for the value of the property taken away by the troops on April 19, 1871; for the loss upon household and other furniture; for the profit that would have been made on the crop of 1871, and for indirect losses, said claim amounting in the aggregate to the sum of \$187,168.03.

The learned counsel for Venezuela in his answer does not controvert the main facts upon which this claim rests; but he raises the following objections:

1. That it does not appear from the proof adduced that the Venezuelan soldiers who caused the injury obeyed orders of their superior officers or that the latter could have prevented the injury; and that therefore the responsibility of the authors of the deed ought to have been first followed up.

2. That Mr. Quirk was only the manager of the estate for Boulton & Co., and that he ought, therefore, in order to fix equitably the amount of the claim, to have produced the contract which he had entered into with said firm.

3. That the claim is barred by the lapse of time.

It is probably true that acts of pillage committed by soldiers absent from their regiments, and not under the direct command of their officers, do not affect the responsibility of their government, and that such acts are considered as common crimes. But this was not the fact here. Quirk complained, on the day following the outrage, directly to General Alcantara, and stated to him that the officer commanding the soldiers had replied to his appeal that his property and himself be respected that he (the officer) was "carrying out strictly the orders of General Alcantara." It is clear from all the evidence that the troops were acting directly under the command of General Rodriguez, who, in turn, was acting directly under the orders of the civil and military governor of the State.

The second objection was also raised by the Venezuelan Government in the course of the diplomatic correspondence regarding this claim. The United States minister, in a note dated April 30, 1872, addressed to the minister of foreign relations, transmitted a letter to him from Messrs. Boulton & Co. setting forth that no written contract existed between them and Mr. Quirk. The learned counsel for the United States attaches to his replication in this case a letter of Boulton & Co., dated January 9, 1872, addressed to the United States minister at Caracas, Mr. Pile, showing the arrangement with Quirk to be that already herein set forth. It provides for a joint enterprise in the raising of sea-island cotton in Venezuela on a somewhat extended scale. Boulton & Co. were to put into the enterprise the principal part of the capital and were to receive in return not interest on money loaned, but profits produced by capital invested. Quirk was to add thereto his more limited capital, as well as his wider knowledge and experience of the business in a general supervision of

the enterprise, and to receive in return not wages or salary for services rendered, but a moiety of the net proceeds of the crop produced.

The Commission has jurisdiction over all claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments. This claim has remained unsettled for over thirty years. It was diligently prosecuted by the Government of the United States in a diplomatic correspondence extending from November 4, 1871, to April 22, 1876, but no final agreement upon the subject was ever reached. The claim arose subsequent to the Commission of 1866, and it did not fall within the jurisdiction of the Commission of 1889. There has been no opportunity for its adjudication by arbitration prior to its submission here. It was brought to the attention of the Venezuelan Government within a few days after its inception. The essential facts which fix the liability of Venezuela were not then and are not now denied. The contention that this claim is barred by the lapse of time would, if admitted, allow the Venezuelan Government to reap advantage from its own wrong in failing to make just reparation to Mr. Quirk at the time the claim arose.

The questions for determination here are the fact of Mr. Quirk's individual loss or injury, the liability of the Venezuelan Government therefor, and the amount, if any, of compensation due.

It is urged that the relation existing between Quirk and Boulton & Co. was that of debtor and creditor. But the tenor of Boulton & Co.'s letter introduced in evidence hardly sustains this contention. The interests of each in the joint enterprise appear to have been distinct and are so regarded in this decision. Boulton & Co. state that they make "no mention of their own losses," as they prefer to put forth "no claim in their own name against the Government of Venezuela." The citizenship of Boulton & Co. is not shown in evidence, and this Commission can not assume jurisdiction of any claim for their losses put forth in the name of a citizen of the United States.

On the other hand, Mr. Quirk was not merely the manager of Boulton & Co. He invested his own capital in the enterprise and was entitled to one-half the profits. The specific amount of his investment is not stated, but from all the evidence, it is believed that a reasonably accurate estimate of his pecuniary losses can be made. The property taken by the troops on April 19, 1871, is claimed as his own, and its value is proved to have been 1,725 pesos. For loss on his furniture and his personal expenses he claims the sum of 5,000 pesos. It appears from Boulton & Co.'s letter that on the date of the injury, the principal part of the crop of 1871 had been taken off and preparations were then making for the second crop. An allowance of 2,000 pesos is believed to be a reasonable valuation of Mr. Quirk's share in the profits of this crop. Upon the total sum of 8,725 pesos interest is allowed at the rate of 3 per cent per annum from January 1, 1872, to December 31, 1903, making the sum of 17,100 pesos, equivalent to the sum of \$13,154.61 United States gold.

But the responsibility of Venezuela does not end here. The testimony is uniformly to the effect that Mr. Quirk was a peaceable and law-abiding man, engaged in an enterprise of practical benefit to the State as well as to himself. Even General Alcantara on April 27, 1871, certifies to Quirk's "perfect, impartial, and circumspect conduct,"

as pertaining to his condition as a foreigner. The evidence is equally clear and uncontroverted that the attack upon him and his family was wholly without justification or excuse. The act was committed by duly constituted military authorities of the Government. It was never, so far as the evidence shows, disavowed, or the guilty parties punished. Under these circumstances, well-established rules of international law fix a liability beyond that of compensation for the direct losses sustained. Other consequences are presumed to have been in the contemplation of the parties committing the wrongful acts, and in that of the Government whose agents they were. The derangement of Mr. Quirk's plans, the interference with his favorable prospects, his loss of credit and business are all proper elements to be considered in the compensation to be allowed for the injury he sustained.

To the amount hereinbefore designated is added, in view of the considerations above mentioned, the sum of \$5,000. An award will therefore be made in this claim for the sum of \$18,154.61 in gold coin of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of Frances Irene Roberts, administratrix of the estate and sole heir at law of William Quirk, deceased, claimant, against the Republic of Venezuela, No. 20, the sum of eighteen thousand one hundred fifty-four and $\frac{61}{100}$ dollars (\$18,154.61) in United States gold coin is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

J. DE J. PAÚL,

Commissioner on the part of Venezuela.

WILLIAM E. BAINBRIDGE,

Commissioner on the part of the United States of America.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTÁRIZ,

Secretary on the part of Venezuela.

RUDOLF DOLGE,

Secretary on the part of the United States of America.

Delivered August 25, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Susanna Maud Jarvis and Rebecca Josephine Jarvis, claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 21.
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BRIEF ON BEHALF OF THE UNITED STATES.

I.

STATEMENT OF FACT.

The United States presents in this case the claim of Susanna Maud Jarvis and Rebecca Josephine Jarvis for bonds issued by the Republic of Venezuela in the total amount of \$81,000 with interest at 7 per cent from April 14, 1863. These bonds were issued to one Nathaniel Jarvis, a native citizen of the United States, on April 14, 1863, and were by him duly assigned and transferred to his nephew, Nathaniel Jarvis, jr. The latter died on the 10th day of January, 1901, leaving a last will and testament whereby all his property was bequeathed to the claimants, his daughters.

The bonds have been duly presented to the Republic of Venezuela for payment. Neither the principal nor any part of the interest has been paid. Fifty-five of the original bonds have been deposited at the Department of State of Washington; twenty-six seem to have been lost and are alleged to be the property of the claimants.

This claim was presented to the former commission appointed under the act of 1885 and was dismissed by that commission for want of jurisdiction, since which time the authorities of Venezuela have refused to recognize the claim solely upon the ground that the decision of the former commission was a final determination adverse to the claimants. From the proceedings before the former commission it appears that the Government of Venezuela raised also the objection that the bonds were not valid and binding obligations of the Republic of Venezuela.

We have therefore to consider, first, the jurisdiction of the present Commission, and, second, the validity of the bonds.

II.

This claim is properly within the jurisdiction of this present Commission.

This subject, which may be considered generally as a question of jurisdiction, really involves several different elements, each of which we will consider in order.

(A)

There can be no objection to the jurisdiction of this Commission because the claim is based upon the bonds issued by the Republic of Venezuela.

It was at one time contended before some of the early arbitration commissions that bonds or other similar obligations issued by a

government were not proper matters of international intervention nor claims proper to be considered by such an arbitration commission, but the rule of all such questions has been since clearly settled to the contrary, especially since the celebrated circular issued by Lord Palmerston in 1848 to the British representatives at foreign courts defining the limits of intervention to include all claims for moneys due English subjects.

Any doubt upon this subject, so far as concerns the claim in this case and the powers of the present Commission, is, moreover, removed by the express language of the protocol in which the Commission is empowered and directed to take up and adjudicate all claims owned by citizens of the United States.

(B)

The claim here made is not barred by any rule of limitation or laches because of its not having been presented to the commission of 1867.

In the first place, the commission of 1867 was one of a limited jurisdiction, and the claims of the claimants in this case could not have been presented to nor determined by that commission. By Article I of the convention under which the commission of 1867 was appointed its jurisdiction was limited to claims which may have been presented to the Government of the United States and its legation in Caracas. That commission therefore had no power to consider the claim in this case for bonds which were not then due. The claim was, in fact, not presented to the commission of 1867, and was not in any way passed upon by that commission. Whether a claim might or might not have been there presented for the interest then in default, if a claim for that interest had theretofore been presented to the Government of the United States or its legation in Caracas, it is needless to consider. There was, of course, at that time some interest in default, but the claimants can not be held responsible for laches or barred in any way because they had not, prior to 1867, applied for the intervention of the United States in favor of the claim merely for unpaid interest for so short a period upon bonds which were issued in 1863 only and were not as yet due.

There was therefore no right on the part of the claimants to have presented their present claim for the principal of the bonds to the commission of 1867, and there having been, as you will presently see, no commission since that time until the present one with power to adjudicate their claims, they can not be held barred by any doctrine of limitations or laches.

It is, moreover, a settled principle of international law, which has no fixed statute of limitations, that the doctrine of prescription or laches is applicable only to a case where a claimant fails to promptly bring the matter to the attention of his government, but neglects so to do for an unreasonable length of time. Such principle of prescription can necessarily have no application to the facts in this case, where the claim was promptly brought to the attention of the United States Government at the time the bonds became due, and the matter has been the subject of constant diplomatic correspondence between the two Governments, and the sole reason for its nonadjudication has been that there has in the meantime been no arbitration commission with power to hear and determine the case.

(C.)

The commission appointed under the act of 1885, which met in 1890, did not have jurisdiction or power to hear and determine this case.

The powers of that latter commission were expressly limited to a review and rededecision of the cases which had been tried in the commission of 1867. It is only necessary in support of this proposition to refer to the repeated findings to this effect contained in the opinions of this commission of 1890.

(D.)

The dismissal of this claim by the commission appointed under the act of 1885, and which met in 1890, was for want of jurisdiction only and is not a bar to or a final adjudication of the claim.

This claim was presented to the commission which met in 1890 and was by it dismissed upon the ground that it was not within the jurisdiction of the commission, not being a claim which had been before the commission of 1867. The dismissal was expressly for want of jurisdiction and without prejudice to the prosecution of the claim elsewhere.

The contention of the Venezuelan authorities that in dismissing for want of jurisdiction the commissioners must necessarily have determined the merits of the claim or that the dismissal without prejudice to the prosecution of the claim elsewhere meant necessarily elsewhere than as against Venezuela are propositions too manifestly unreasonable to need further discussion. The principle is recognized by every code of municipal law and is basic to international or public law as well, that in order to constitute a bar or an adjudication of the claim there must have been a hearing and decision upon the merits, and that a dismissal for want of jurisdiction, which means for want of power to hear or determine a claim, necessarily means that the commission did not hear or decide the merits of the case.

The powers of this present Commission are moreover expressly extended by the protocol to include all claims owned by citizens of the United States. Upon this power there is no limitation or restriction whatsoever. If a claim exists in favor of a citizen of the United States, this Commission has the power to consider and determine it, and hence necessarily to consider and determine whether there is or is not a valid claim.

There can, therefore, be no valid objection to interpose to the trial and determination of this claim by the present Commission.

III.

The bonds owned by the claimants are valid and enforceable obligations of the Republic of Venezuela.

Upon the former hearing, as appears from the papers, some objection was raised by the Venezuelan authorities that these bonds were not obligations of the Republic of Venezuela, but only of the State of Caracas. This contention is manifestly unsupported. The obligations of the bonds purport upon their face to be obligations issued by the National Government, and the facts show that they were issued by what purported at least to be at that time a de facto National Govern-

ment of the Republic of Venezuela. It is a different question, of course, whether they are obligations of Venezuela at all, but there can be no question upon the facts that if they are valid obligations they are obligations of the nation or of the Republic of Venezuela as an entirety and not of any particular State thereof.

It is, moreover, clear, we think, from the evidence of the case that these obligations are binding and valid obligations on the Republic of Venezuela. The bonds were issued on the 14th day of April, 1863, by the Paez government. The contention of the Venezuelan authorities that this was a government *de facto* only and never became a government *de jure*, and that hence the obligations are not binding upon the present Government, can not, we think, be sustained, and we believe it is necessary to refer to but one fact to support our contention. The Paez government was, it is true, in power as a *de facto* government apparently but a short space of time and went out of power a short time after the issuance of these bonds. If this Paez government had gone out of existence as the result of a counter revolution and destruction of its power, the contention of the Venezuelan authorities would, perhaps, be important, but it clearly appears and is, moreover, a well-known matter of Venezuelan history that the Paez government was terminated by virtue of the treaty of Coche, which was a treaty between the contending parties, General Paez and General Falcon, by which treaty it was expressly provided in the first article thereof that the federal army recognizes the Paez government, and provision is made for the meeting of the National Assembly, which shall in substance and effect be constituted by a reunion of the two contending forces. This treaty is a recognition of the Paez government as a government *de jure*. The government thereafter established under this treaty became the government *de jure* of the country. It is true that the Paez government may never have been recognized by the United States, but as it was expressly recognized as having been a proper and legitimate government during the period of its existence by the Venezuelan Government itself, and as the subsequent government arose not from an overthrow, but from a coalition of this government with its contending forces, it can not be contended but that the Paez government was during the period of its existence the actual government and the only government of the Republic of Venezuela, and that its acts while in power were the acts of and the obligations it created the obligations of the Republic of Venezuela.

It is a well-established principle of international law that debts created by one properly constituted government become and remain binding obligations upon the succeeding governments. See this principle laid down in Wheaton's International Law, 2d ed., p. 52:

As to public debts, whether due to or from the revolutionary state, a mere change in the form of government or in the person of the ruler does not affect their obligation. The essential form of this state, that which constitutes it an independent community, remains the same; its accidental form only is changed. The debts being contracted in the name of the state, by its authorized agents, for its public use, the nation continues liable for them, notwithstanding the change in its internal constitution. The new government succeeds to the fiscal rights and is bound to the fiscal obligations of the former government.

There can, therefore, we contend, be no question that the bonds issued to Nathaniel Jarvis were issued by proper authority of the Venezuelan Government and became and have remained a valid and binding obligation upon that Government.

IV.

These bonds were based upon sufficient consideration.

It probably follows as a matter of public law that if, as we have seen, these bonds were issued under and by the authority of what was at the time the properly constituted and only Government of Venezuela, a question of their consideration could not be raised by the subsequent governments.

It clearly appears, however, from the facts of this case that there was an ample consideration for the issuance of these bonds.

In considering this question the distinction must be borne in mind between considerations of such a character as to render enforceable an implied contract, and those considerations which are more moral in their nature and yet support a contract actually made, as, for example, a bankrupt who has been discharged is under no legal obligation to pay his former debts, but the existence of such former debts has been uniformly held to be a sufficient consideration to support a new promise to pay.

Again it must be borne in mind that the question of the morality of the consideration must be viewed from the standpoint of the Paez government, not from the standpoint of the government which the Paez government overthrew, nor from the standpoint of his opponents who subsequently united with Paez in the formation of a new form of government. The Paez government, as we have seen, must be regarded as the established Government of Venezuela during the period of its existence, and that, if for no other reason, because of its recognition by the treaty out of which the subsequent government arose. It must therefore be conceded that the revolution headed by Paez was a meritorious and proper one, and that hence obligations incurred by the Paez party in establishing themselves were proper obligations for recognition. This being so, as a matter of moral obligation on the part of the Paez government it made no difference whether the consideration for which these bonds were issued was services and supplies rendered to the Paez party in their attack upon the previous government which succeeded, or in the preceding attack made by the same party which did not succeed. The moral obligation remains the same, although there might not have been and probably would not be any legal right to enforce the obligation upon the Paez government as a contract incurred by it.

It can, moreover, make no difference that from the standpoint of other outside nations, including the United States, the rendering of aid to the Paez government in its attacks upon the previous Government of Venezuela were not things to be encouraged; as the Paez revolution succeeded it must be held, as a matter of international law, that its cause was just. In any event, however, the sole question as to consideration which can come before the present Commission, or upon which the bonds could be held invalid, was whether there was on the part of the Paez government in 1863 at the time when it was, as we have seen, the proper and only Government of Venezuela, a sufficient consideration, moral and otherwise, for the issuance of these bonds.

The facts, we think, are clearly that there did exist a sufficient consideration in this respect.

V.

An award should be made in favor of the claimants for the full amount of \$81,000 of bonds, with interest from April 14, 1863.

These bonds, being as we have seen, valid written obligations of the Republic of Venezuela and the claim falling within the jurisdictional powers of this Commission, an award, we submit, should be made for the full amount of these bonds, the claim being based upon contractual obligations bearing interest and there having been no laches in the presentation of the claim to the Government of Venezuela nor to the Government of the United States for its intervention, interest should be allowed for the full time called for by the bonds. The interest from April 14, 1863, to June 1, 1903, amounts to \$227,529.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

In the matter of Susanna Maud Jarvis and Rebecca Josephine Jarvis, claimants.

YOUR HONORS: Pursuant to instructions received by me from the Department of State of the United States of America, I hereby request that in the event of an award being rendered by your honorable body in favor of the above-named claims, a reservation of all rights and equities shall be made for the benefit of all assignees under said claim. The claims of such assignees will subsequently be determined by the Department of State of the United States of America in the event of a favorable award.

Very respectfully,

ROBERT C. MORRIS,
Agent of the United States.

CARACAS, VENEZUELA, June 19, 1903.

[Translation.]

SUSANNA MAUD JARVIS AND REBECCA	}	Claim No. 21.
Josephine Jarvis		
v.		
VENEZUELA.		

ANSWER.

Honorable Members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied the claim presented by Susanna Maud Jarvis and Rebecca Josephine Jarvis, American citizens, arising out of bonds issued by the Republic in favor of the predecessor in interest of the claimants for the value of \$81,000, besides interest since the 14th of April, 1863, calculated at the rate of 7 per cent, and respectfully shows to the tribunal:

The American citizen, Nathaniel Jarvis, presented to the Mixed Claims Commission which met in Washington during the year 1890 this same claim which was rejected by that tribunal at the instance of the agent for Venezuela for want of jurisdiction without prejudice to its prosecution through a different channel. It has been, before this, the object of many diplomatic interviews and of a long correspondence between the agents of the two Governments in which the inadmissibility of the claim has always been sustained on the part of Venezuela being founded upon arguments of an irresistible weight.

In fact, according to article 8 (5) of the convention concluded between the Republic of Venezuela and the United States on the 25th of April, 1866, to create a mixed commission which should take cognizance of claims pending on the day of its installation of citizens of the last-named country against the first—

The decisions of this Commission and those (in case there may be any) of the umpire shall be final and conclusive as to all claims * * * those which shall not be presented within the twelve months herein prescribed shall be disregarded by both Governments and *considered invalid*.

Now, then, the claim of Mr. Jarvis was not presented to the mixed commission which met at Caracas in 1867–68, since it is not mentioned in the reports of its members; therefore it is just to say that on account of such omission it remained in the class of those disregarded and considered invalid by both Governments, all the more since the facts upon which it is founded happened before the year 1868. It is compliance with a public treaty which is invoked.

It is true that when Venezuela brought to light the various frauds in the judgments of said commission, and there was a new one created to review them by the convention of the 5th of December, 1885, it was stipulated in Article XI—

The decisions of the Commission organized under this present convention shall be final and conclusive as to all claims presented or proper to be presented to the former mixed commission.

But such article could not revive a claim which, having existed since 1863 and the interests on which had been demanded from the Government by the legation of the United States at Caracas in 1864 and 1865, was not presented to the Commission in 1867 and 1868.

Nevertheless, it was presented, as has already been said, to the mixed commission convoked in Washington in 1888–1890, which, on the 12th of August, rejected it for want of jurisdiction.

The said commission decided likewise as to four more cases, one of them that of Mr. Henry Woodruff, which there is at present an attempt to renew also before this commission, to whom bonds were issued at \$1,000 each.

From the 19th of May, 1892, Mr. Woodruff had made a representation to the Senate of his country to incorporate his claim in a new convention with Venezuela in order that it might be examined and decided *for the third time*.

Although, on the 19th of January of that year, there was a new convention of arbitration celebrated between the two countries, this was limited to the claim of the Venezuelan Steam Navigation Company or, be it, to Mr. John Hancox, and the Government of the United States did not ask that there be included in it the claim of Mr. Woodruff, nor the other four which had been the object of a similar award on the part of the mixed commission.

Now there is presented to this tribunal the claim of Mr. Jarvis, but the bonds, the payment of which is demanded, are not produced, nor the documents relative to their issuance, and thus there can be formed no idea of the legitimacy of their issue. As it appears, the origin of said debt arose from aid lent to General Paez in a revolution against the Government of Venezuela. If this is true, the following reasoning may be deduced: In accordance with our civil code for the validity of such contracts four essential conditions are requisite. One of them is the legitimate consideration to obligate oneself. Article 1091 says: "An obligation without consideration, or founded upon a false or illegal consideration, has no effect." (Art. 1130, Code Napoleon; Art. 1118, Italian Civil Code.) Article 1094 says: "The consideration is illegal when it is contrary to law, to good morals, or to public order." (Arts. 1133, French Civil Code; and 1022, Italian Civil Code.) By article 1095 it is provided, "When an illegal consideration constitutes a crime common to both contracting parties which is subject to punishment, proceedings shall be instituted against both."

The undersigned cites the local law because the contracts between a sovereign and an individual belong only to civil law. (See Geffcken, Note to paragraph 82 of International Law of Europe by A. G. Heffter.)

Moreover, according to this last-named author, in his said treatise of international law, a legal consideration is the first essential condition of a public treaty and thus the physical and moral object of a treaty. Thus a contract, contrary to the moral order of the world, could not have any validity, for example, one which would favor slavery; one that would cause the cessation of commerce between several nations; one which might stipulate the violation of obligations contracted. Bello sets forth that treaties are null on account of the inequity or turpitude of the consideration.

For the reasons stated, the claim ought to be rejected.

Caracas, July 13, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of SusannaMaud Jarvis and Rebecca Joseph- ine Jarvis, claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 21.
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REPLICATION ON BEHALF OF THE UNITED STATES.

I.

In the answer of Venezuela, in the above-entitled matter, it is contended that the bonds out of which this claim arises are not produced, and that thus there can be no idea formed as to the legitimacy of their issue. In reply to this we desire to state that the original bonds in this matter are now and have been since the submission of this claim on file in the legation of the United States in Caracas, subject to the orders of this Commission.

II.

In the answer of Venezuela it is also stated that—

the claim of Mr. Jarvis was not presented to the mixed commission which met at Caracas in 1867-68, since it is not mentioned in the reports of its members; therefore it is just to say that on account of such omission it remained in the class of those disregarded by both Governments, all the more since the facts upon which it is founded happened before the year 1868.

This statement is only partially correct. The claim, to be sure, was not presented to the Caracas commission, but it was in no sense disregarded and considered invalid by both Governments, for Mr. Evarts, the Secretary of State of the United States, in his letter of January 28, 1878, to Mr. John R. Brady, says:

In reply I have to state that it appears upon examination that the claim in question was not among those submitted to the Venezuelan Commission, it having been previously admitted by the Venezuelan Government.

And Mr. Evarts also added:

It appears by the dispatch of the United States legation at Caracas that the claim was presented by Mr. Culver, the United States minister at Caracas, to the Venezuelan Government in 1864, but that that Government, although recognizing the claim, has taken no steps in regard to its payment.

This presentation by Mr. Culver was merely for arrears in interest.

In addition to this Mr. Scott, the United States minister at Caracas, informed the Department of State in his dispatch of January 14, 1889, that in compliance with its instructions he had sought an interview with the Venezuelan minister of foreign affairs and had been informed by him that the claimant must submit his claim to the claims commission then about to convene in Washington under the convention of December 5, 1885, between Venezuela and the United States. When this claim was submitted to the commission which sat at Washington, the counsel for Venezuela, on August 12, 1890, moved that it should be dismissed, and it was accordingly dismissed for want of jurisdiction, without prejudice, however, to the prosecution of the claim elsewhere.

It is evident from this that the Government of Venezuela recognized the claim and insisted on its submission, although her counsel, whether acting under direct instructions or upon his own initiative, subsequently moved for its dismissal. This dismissal, however, can in no sense be regarded as a bar to the claim before this Commission, for the principle is recognized in every code of municipal law and is basic to international or public law as well, that in order to constitute a bar or an adjudication of the claim, there must have been a hearing and a decision upon the merits, and that a dismissal for want of jurisdiction means simply a want of power to hear or determine the claim, and necessarily means that the commission did not hear or decide the merits of the case. It is evident from the foregoing that this case was not one of that class of cases which was disregarded and considered invalid by both Governments, and it is also evident that this Commission has full power to examine it and to decide it.

III.

Objection is raised by Venezuela to the consideration for the issuance of these bonds as being void as against public policy. We submit that the Government itself which issued these bonds was the sole judge whether or not it should assume a given public obligation and

that its action is not subject to review by any succeeding government, and that the validity of the consideration can not be questioned. In the decree of April 14, 1863, the consideration for the issuance of these bonds is clearly set forth as follows:

And the Government, considering that the service rendered by Mr. Jarvis in the period mentioned was very opportune, since its object tended to defend the cause of morality under the auspices of the illustrious citizen, overthrowing the ominous domination that oppressed the Republic, and, moreover, that it would not be just nor right that that foreigner who so generously contributed to aid, with uncommon disinterestedness, the triumph of the same cause whose principles this day prevail under the administration of a great number of citizens who fought for it, should suffer damages for the default of the payment of a claim to a certain point sacred; and, finally, that the application of said objects to the end designed, is justified, the Government resolves that the credit which Mr. Nathaniel Jarvis claims, with, moreover, the interest of 7 per cent per annum, be admitted.

We submit that nothing could be clearer as a recognition on the part of the Government of Venezuela than the decree above quoted, both as to the obligation and the morality of its consideration. No succeeding government can challenge the action of its predecessor in issuing obligations of this character. See Taylor, *International Public Law*, section 161, citing Twiss, Vattel, Wolf, and Heffter:

Neither a change in the person of its ruler nor a complete transformation in the internal organization of its government can affect the treaties or public debts of a state, so long as the corporate identity remains. As the people as a whole were bound at their creation by the acts of authorized agents, each new government succeeds not only to the fiscal rights but to the fiscal obligations of its predecessor. The obligation to pay all debts previously contracted endows each new government, of course, with the public domain and all other property to which the state is entitled.

Also, in the commission which was established on November 25, 1862, between the United States and Ecuador for the settlement of claims, the umpire, Dr. Alcides Desturge, a citizen of Venezuela who is reported to have been "an accomplished scholar, student, and a man of inestimable integrity," held in the claim of R. W. Gibbes, founded upon a bond issued by the Republic of Colombia:

By this article of the convention, which is the fundamental basis of the labors of the Mixed Commission, we see that in order to establish the right to present a claim the nationality of the claimant is what is insisted upon, and not the origin of the claim, because, both impliedly and by common sense, it is assumed that the perfect right of a creditor is founded only in a document duly executed by the debtor.

Also see Phillimore's *International Law*, Volume II, page 8, citing Vattel:

Les emprunts [Vattel says with great precision] faits pour le service de l'Etat, les dettes créées dans l'administration des affaires publiques, sont des contrats de droit étroit, obligatoires pour l'Etat et la nation entière. Rien ne peut la dispenser d'acquitter ces dettes-là. Dès qu'elles ont été contractées par une puissance légitime, le droit du créancier est inébranlable.

IV.

These bonds, which were issued in two series, matured, respectively, in the years 1868 and 1873, are not barred by any treaty stipulation, either in whole or in part, or as to their interest, and the question of the consideration of their issuance can not be raised. We submit, therefore, that an award should be made for the full amount of this claim and interest.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of Susanna Maud and Rebecca Josephine Jar- vis, claimants,	} No. 21.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

DECISION.

Opinion by Bainbridge, Commissioner.
The Commission disallows the claim.

September 18, 1903.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of Susanna Maud and Rebecca Josephine Jar- vis, claimants,	} No. 21.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

BAINBRIDGE, *Commissioner*.

The memorial states:

(1) That on or about the 14th day of April, 1863, the Republic of Venezuela did, for value received, duly make, execute, and deliver unto one Nathaniel Jarvis, a native citizen of the United States, its bonds or certificates of indebtedness in the amount of eighty-one thousand (\$81,000) dollars, consisting of eighty-one bonds of one thousand (\$1,000) dollars each, bearing interest at the rate of seven per cent per annum, payable semiannually, part thereof maturing within five years from the date thereof and the balance within ten years from said date.

(2) That thereafter the said Nathaniel Jarvis, being then still the lawful holder and owner thereof, did, for value, duly endorse and deliver the aforesaid bonds unto his nephew, Nathaniel Jarvis, jr., a native citizen of the United States, who remained the lawful owner and holder thereof until the time of his death, which occurred on the tenth day of January, 1901; that the said Nathaniel Jarvis, jr., left a last will and testament, by which he devised and bequeathed all his property to his two daughters, the claimants herein, whereby said claimants became the lawful owners and holders of said bonds.

(3) That said bonds were at their maturity duly presented for payment, but that payment of both principal and interest has been most unjustly withheld from the claimants and their predecessors in interest by the Republic of Venezuela, without any legal, equitable, or moral excuse or justification, and that there was on April 14, 1903, justly due and owing to claimants by the Republic of Venezuela on the said bonds the sum of \$307,800 principal and simple interest.

(4) That no other person has any interest in the claim, excepting that claimants' attorney and counsel, Anderson Price, and one Charles M. Dally are contingently entitled for services to a share or part of the recovery; and that twenty-six of said bonds have been lost or mislaid and are not now in the possession of claimants.

The bonds upon which this claim is based are in the following form:

[Translation.]

Republic of Venezuela.

Treasury of the province of Caracas.

For 1,000 dollars.

Bond in favor of Mr. Nathaniel Jarvis, or to his order, for one thousand dollars, money of the United States, payable in the term of five (ten) years counted from this date.

The interest at the rate of seven per cent per annum which may accrue to the aforesaid sum shall be paid every six months, the whole in conformity with the resolution of the Treasury Department issued to-day.

Caracas, April 14, 1863.

The Comptroller:

(Signed) A. EYZAGUIRRE.

The Treasurer:

(Signed) M. R. LANDA.

The resolution referred to in the bonds is in the following terms:

DEPARTMENT OF THE TREASURY,
Caracas, April 14, 1863.

Resolved, It appears from the proceedings that Mr. Nathaniel Jarvis, a citizen of the United States of North America, lent to his excellency General José Antonio Paez, in 1849, the sum of twenty-three thousand five hundred hard dollars, in the value of a steamer named *Jackson* or *Buena Vista*; and also that of fifteen thousand four hundred and fifty hard dollars, in the amount of three thousand equipments and one hundred thousand ball cartridges, the payment, moreover, having been stipulated with said Jarvis of the amount of two thousand four hundred and fifty-eight hard dollars, for various indemnities, all amounting to the sum of forty-one thousand four hundred and eight hard dollars. And the Government considering that the service rendered by Mr. Jarvis in the period mentioned was very opportune, since its object tended to defend the cause of morality, under the auspices of the illustrious citizen, overthrowing the ominous domination that oppressed the Republic, and, moreover, that it would not be just or right that that foreigner who so generously contributed to aid, with uncommon disinterestedness, the triumph of the same cause, whose principles this day prevail under the administration of a great number of citizens who fought for it, should suffer damages for the default of the payment of a claim to a certain point sacred; and, finally, that the application of said objects to the end designed is justified, the Government resolves that the credit which Mr. Nathaniel Jarvis claims, with, moreover, the interest of seven per cent per annum, be admitted. Instruct the auditor-general to notify the treasury of this province to accredit in its account the sum expressed of forty-one thousand four hundred and eight hard dollars, and the interest previous to the liquidation thereof, which shall be satisfied when the embarrassed circumstances of the national exchequer will permit it.

For His Excellency:

ROJAS.

It is a copy. The subdirector of the department of the treasury.

(Signed) J. A. PEREZ.

Briefly stated the facts are that Gen. José Antonio Paez, who had been from 1830 to 1838 the first President of Venezuela, was in 1849 in exile. In that year he undertook an expedition to overthrow the then existing government of Venezuela. It was in aid of this enterprise that Nathaniel Jarvis, a citizen of the United States, rendered General Paez the opportune service referred to in the foregoing resolution, in the loan of the steamer *Jackson* or *Buena Vista*, the munitions of war and advances of money designated. But the expedition was unsuccessful, and the steamer, munitions, and General Paez himself were captured by the Government within a few weeks. Paez was imprisoned for a time and then was again sent out of the country. He went to New York, where he remained until 1858, when he was invited to return to Venezuela. In 1860 he was accredited as minister to the United States. Returning to Venezuela in 1861, he was, on August 29, proclaimed at a public meeting of the citizens of Caracas "Supreme Civil and Military Chief of the Republic."

On September 10, 1861, he took possession of the Government as Supreme Chief of Venezuela and issued a decree containing the following:

The people of Caracas, to whom entire liberty was left to deliberate in the use of their sovereignty, spontaneously ratified this vote and appointed me civil and military chief of the Republic, with full power to pacify and reconstruct it under the popular republican form. At La Victoria I was met by the commission sent to present me the vote of the capital (Caracas) and to request my acceptance. But I feel satisfied, fully satisfied, with the uniformity of the vote of Caracas and of this province (Caracas). I am still ignorant of the will of the Republic. National opinion is, and has always been, the guide of my conduct.

The Paez government continued until June, 1863. It was never recognized by the United States as the government of Venezuela. In a dispatch to Minister Culver, dated November 19, 1862, Mr. Seward, Secretary of State, said, referring to the disordered condition of Venezuela:

The United States deem it their duty to discourage that (revolutionary) spirit so far as it can be done by standing entirely aloof from all such domestic controversies until, in each case, the State immediately concerned shall unmistakably prove that the government which claims to represent it is fully accepted and peacefully maintained by the people thereof.

And furthermore

This government has thus far seen no such conclusive evidence that the administration you have recognized (i. e., the Paez government) is the act of the Venezuelan State as to justify acknowledgment thereof by this Government.

On April 24, 1863, ten days after the Jarvis bonds were issued, the treaty of Coche was signed between the representatives of Paez and Falcon providing for a national assembly, which convened on June 17 following and appointed General Falcon President. The Falcon government was subsequently officially recognized by the United States.

It is to be observed at the outset of the consideration of this claim that the bonds themselves show that they were issued "in conformity with the resolution of the Treasury Department" issued on the same date. The resolution thus referred to in the bonds states that the consideration upon which they were based was the opportune service rendered by Mr. Jarvis to General Paez in 1849, which service "tended to defend the cause of morality, under the auspices of the illustrious citizen, *overthrowing the ominous domination that oppressed the Republic*," and declares that "it would not be just nor right that that foreigner who so *generously contributed to aid*, with uncommon disinterestedness, the triumph of the same cause, whose principles this day prevail under the administration of a great number of citizens who fought for it, should suffer damages for the default of the payment of a claim to a certain point sacred." In view of this fact it is idle to argue that "if an inquiry could now be made as to whether the debt represented by the Jarvis bonds was a legal one it would establish a dangerous precedent," and that "no one would be safe in buying and selling national bonds." The Jarvis bonds and the resolution of April 14, 1863, are indissolubly united, and, construed together, inform the world of the insufficient basis upon which they stand.

These bonds, then, were issued in consideration of the opportune service and generous aid rendered by Nathaniel Jarvis to General Paez in 1849, in the latter's attempt to overthrow the then existing government of Venezuela. There is not the slightest doubt about that. Nor is there the slightest doubt but that Mr. Jarvis's opportune service and generous aid to General Paez in 1849 were in violation of his duty to his country and in disobedience to its laws. Under the Constitution of the United States a treaty between the United States and a

foreign government is part of the supreme law of the land. In 1849 the treaty concluded January 20, 1836, between the United States and Venezuela, was in full force and obligatory upon both nations, and by the first article of that treaty it was declared that "there shall be a perfect, firm, and inviolable peace and sincere friendship between the United States of America and the Republic of Venezuela, in all the extent of their possessions and territories, and between their people and citizens, respectively, without distinction of persons or places." The only Venezuela known to international law in 1849 was the recognized government of that country, and with it the Government of the United States was at peace under the treaty. This treaty was binding upon Mr. Jarvis as a citizen of the United States, and he could lawfully do no act nor make any contract in violation of its provisions.

It was also provided in the second section of Article XXXIV of the treaty of January 20, 1836, that—

If any one or more of the citizens of either party shall infringe any of the articles of this treaty, such citizens shall be held personally responsible for the same, and harmony and good correspondence between the two nations shall not be interrupted thereby, each party engaging in no way to protect the offender or sanction such violation.

It would seem to be a fair inference from the wording of the resolution of April 14, 1863, and from all the evidence here presented, that Jarvis furnished General Paez with the ship *Jackson*, the 3,000 equipments, and 100,000 balled cartridges from the United States. Referring to his preparations for the expedition of 1849, General Paez, in his Autobiography, says (vol. 2, p. 469):

Ademas de los recursos indicados contaba con un buon vapor de guerra y fusiles que debian venir de los Estados Unidos.

It is indisputable that Nathaniel Jarvis, a citizen of the United States and presumably within its jurisdiction, supplied General Paez with a vessel and munitions of war intended for use in a military expedition or enterprise against a Government and people with whom the United States Government was at peace. The inference is strong, if not irresistible, that Jarvis violated the neutrality laws of the United States in such measure as to have rendered himself liable to a criminal prosecution therefor. (R. S., secs. 5283 and 5286.)

The language of the resolution of April 14, 1863, with regard to Mr. Jarvis's opportune service and generous contribution to the aid of the Paez cause in 1849, precludes the consideration of the original transaction as a mere commercial venture on the part of Jarvis, such as might have been undertaken without a violation of the laws of neutrality. Mr. Jarvis was, according to the evidence, in Caracas at the time the bonds were issued, and the resolution undoubtedly expresses the basis on which he was then urging his claim as well as the true basis of the original obligation.

It is not deemed necessary, however, to determine whether Jarvis violated the letter as well as the spirit of the neutrality laws of the United States. He did violate the treaty then existing between the United States and Venezuela. He did violate the established rule of international law that when two nations are at peace all the subjects or citizens of each are bound to commit no act of hostility against the other.

In *Dewutz v. Hendricks*, 9 Moore C. B., 586 (S. C., 2 Bing., 314), it was held to be contrary to the law of nations for persons residing in

England to enter into engagements to raise money by way of loan for the purpose of supporting subjects of a foreign state in arms against a government in friendship with England, and no right of action attached upon any such contract.

In *Kennett v. Chambers* (14 How., 38) the Supreme Court of the United States held that a contract by an inhabitant of Texas to convey land in that country to citizens of the United States in consideration of advances of money made by them in the State of Ohio to enable him to raise men and procure arms to carry on the war with Mexico, the independence of Texas not having been at that time acknowledged by the United States, was contrary to the latter's national obligations to Mexico, violated the public policy of the United States and could not be specifically enforced by a court of the United States. In the course of his opinion in this case Chief Justice Taney said:

The intercourse of this country with foreign nations and its policy in regard to them are placed by the Constitution of the United States in the hands of the Government, and its decisions upon these subjects are obligatory upon every citizen of the Union. He is bound to be at war with the nation against which the war-making power has declared war, and equally bound to commit no act of hostility against a nation with which the Government is in amity and friendship. This principle is universally acknowledged by the laws of nations. It lies at the foundation of all government, as there could be no social order or peaceful relations between the citizens of different countries without it. It is, however, more emphatically true in relation to citizens of the United States. For as the sovereignty resides in the people, every citizen is a portion of it and is himself personally bound by the laws which the representatives of the sovereignty may pass or the treaties into which they may enter within the scope of their delegated authority. And when that authority has pledged its faith to another nation that there shall be peace and friendship between the citizens of the two countries every citizen of the United States is equally and personally pledged. The compact is made by the department of the government upon which he himself has agreed to confer the power. It is his own personal compact as a portion of the sovereignty in whose behalf it is made. And he can do no act nor enter into any agreement to promote or encourage revolt or hostilities against the territories of a country with which our Government is pledged by treaty to be at peace without a breach of his duty as a citizen and the breach of the faith pledged to the foreign nation. And if he does so he can not claim the aid of a court of justice to enforce it. The appellants say in their contract that they were induced to advance the money by the desire to promote the cause of freedom. But our own freedom can not be preserved without obedience to our own laws nor social order preserved if the judicial branch of the Government countenanced and sustained contracts made in violation of the duties which the law imposes or in contravention of the known and established policy of the political department acting within the limits of its constitutional power.

But it is strongly urged here that the nature of the original consideration is immaterial; that the claim is upon the bonds of 1863, not upon the contract of 1849; and that the act of the Venezuelan Government in 1863 in recognizing the obligation and issuing its bonds in payment thereof was the sovereign act of an independent nation and was final and conclusive and binding upon the Venezuelan people and all succeeding governments of that country.

Differences of opinion may possibly exist as to the political ethics which would justify a temporary ruler in paying his personal debts with national obligations; but certainly none can exist as to the legal proposition that a subsequent contract made in aid and furtherance of the execution of one infected with illegality partakes of its nature, rests upon an illegal consideration, and is equally in violation of the law. The opportune service rendered by Jarvis in 1849 in violation of law created no legal obligation on the part of Paez, much less on

the part of the Government of Venezuela. And a past consideration which did not raise an obligation at the time it was furnished will support no promise whatever. (3 Q. B., 234; Harriman on Contracts, 83; Bouvier Law Dict., title Consideration.)

Essentially the argument of claimants is that the bonds are specialties, importing a valid consideration, and that their issuance as the act of the Venezuelan Government, is binding upon it. The claimants have endeavored to show that the power, in virtue of which the bonds were issued, was the medium through which the authority of the State was conveyed and by which it was bound. In this they have failed. So far as the claimants are concerned, the issuance of the Jarvis bonds was not the "act of the Venezuelan Government." It is doubtless true that the question whether the Paez government was or was not the de facto government of Venezuela at the time the bonds were issued is one of fact. But the decision of the political department of the United States Government on November 19, 1862, that there was no such conclusive evidence that the Paez government was fully accepted and peacefully maintained by the people of Venezuela as to entitle it to recognition must be accorded great weight as to the fact, *and is in any event conclusive upon its own citizens.* And certainly the evidence that the Paez government was "submitted to by the great body of the people" was no stronger on April 14, 1863, when the Jarvis bonds were issued and when, as a matter of historical fact, it was encompassed by its enemies and tottering to its fall.

The language employed by Mr. Hassaurek, in his opinion in the cases of the *Medea* and *Good Return* (3 Moore Int. Arb., 2739), decided by the United States and Ecuadorian Commission of 1865, may not inappropriately be quoted here. He says:

A party who asks for redress must present himself with clean hands. His cause of action must not be based on an offense against the very authority to whom he appeals for redress. It would be against all public morality and against the policy of all legislation, if the United States should uphold or endeavor to enforce a claim founded on a violation of their own laws and treaties, and on the perpetration of outrages committed by an American citizen against the subjects and commerce of friendly nations. * * * As the American commissioner, I could not sanction, uphold and reward indirectly what the law of my country directly prohibits. He who engages in an expedition prohibited by the laws of his country must take the consequences. He may win or he may lose. But this is his own risk; he can not, in case of loss, seek indemnity through the instrumentality of the government against which he has offended.

The claim must be disallowed.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

DECISION.

THE UNITED STATES OF AMERICA ON BEHALF of Susanna Maud and Rebecca Josephine Jarvis, claimants,	} No. 21.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

The above-entitled claim is hereby disallowed.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.
J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

RUDOLF DOLGE,
Secretary on the part of the United States of America.
J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

Delivered September 18, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of HENRY WOODRUFF, claimant,	} No. 22.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of Henry Woodruff to recover the face value of certain bonds, in the sum of \$46,000, with interest at 9 per cent per annum from July 24, 1860. The interest amounts to \$176,182.42 to February 17, 1903.

I.

STATEMENT OF FACTS.

The claimant is a natural-born citizen of the United States, resident in the United States, and is the owner of 46 of the bonds hereinafter referred to. These bonds were originally issued by a corporation organized under the laws of the Republic of Venezuela, known as the Railway of the East. This corporation was engaged in constructing a railroad under a concession granted on the 10th of January, 1859, conceding the right to erect and maintain a line of railway from Caracas

to Petare. On the 24th of July, 1860, the said corporation made and executed its several bonds in the sum of \$1,000 United States currency, numbered from 1 to 90, with interest at 9 per cent per annum, and secured by a mortgage upon the properties of the railway. Forty-six of these bonds, numbered from 1 to 46, have since, by intermediate transfers and for face value, become the property of the claimant.

Subsequently differences having arisen between the Government and the persons erecting said railway as to the subscription of the Government of Venezuela to the enterprise, and other matters, the Government of Venezuela on the 19th of December, 1863, took possession of said railway and assumed the obligation of paying said bonds. On the 20th day of April, 1864, the Government of Venezuela sold said railway to one Arthur Clark, agreeing by said contract to take up and retire the above-mentioned bonds, but subsequently said contract was annulled and the control and possession of said property was again taken and has since continued to be held by the Government of Venezuela, and no part of the principal or interest of said bonds has ever been paid.

II.

The claimant is not barred from presenting his claim before this Commission by the findings either of the Commission which met in 1867 and 1868, nor that which met in 1890.

The Commission of 1867-68 seems to have dismissed this claim because the original bonds were not presented, the dismissal being expressly upon the statement that the claim was in nowise affected or invalidated thereby. The commission of 1890 dismissed the claim without prejudice to other prosecution of the claim.

It seems to be contended by the Government of Venezuela that such dismissal without prejudice amounts to a final adjudication of the claim, but such a position can not be seriously maintained before a judicial tribunal. By every principle both of municipal law and of international or public law a dismissal without prejudice implies that the merits of the case have not been passed upon, but that the claim may be again presented.

The dismissal without prejudice in this case was not because of want of jurisdiction, it is true, but because of a finding that the claimant had mistaken the nature of his remedy and was not entitled to recovery upon the theory of his case, nor consequently the evidence offered, although he was evidently entitled to relief, and the dismissal without prejudice was made in that form in order that the claimant might obtain relief upon presenting the proper claim.

This present Commission is the first commission since that time having power to adjudicate and settle claims of citizens of the United States against the Government of Venezuela, and the claimant has now sought to present his claim upon a theory and basis on which he is clearly entitled to relief.

The question, therefore, arises before this Commission de novo whether the claimant is entitled to the relief sought, and in making this claim he is in nowise precluded by the preceding dismissals thereof.

III.

The facts show a liability on the part of the Republic of Venezuela for the payment of the principal and interest of these bonds.

The claim made before the commission of 1890 seems to have been, in the first place, that the Venezuelan Government was liable for these bonds, because it had wrecked the enterprise by not paying its subscription to the capital stock thereof. This claim was held by that commission to be untenable and is not made the basis of the present claim. The claim is now based, first, upon the fact that the Venezuelan Government took possession of the railroad and annulled the concession. This fact would be alone sufficient to support and warrant a finding in favor of the claimant. Whatever doubts may have existed in the majority of the minds of the commissioners in 1890 as to the liability of the Government in such a case, there can be no doubt that at the present time and in the present state of international law there is a liability on the part of a government taking possession of a railroad, or other property, to the bondholders or stockholders of that railroad.

See for full exposition of the law upon this subject the recent and very able opinion of Sir Henry Strong and Mr. Don M. Dickinson in the matter of the arbitration between the Republics of the United States and Salvador, in which the principle of international law is plainly laid down that where a government makes itself a party to an enterprise and contracts with individuals for the carrying out of an undertaking it can not annul the concession upon which that enterprise is based without making itself liable for damages to the other parties to the enterprise, unless it itself proceed by due course of judicial proceedings to have the franchise annulled upon proper grounds.

This principle is alone consonant to the dictates of equity and justice, which form the basis of international law, and which are, by the express terms of the protocol, made binding upon the determinations of this Commission.

In this case the Government of Venezuela brought no judicial proceedings to annul the franchise and concession granted to this railway company, but took possession of its property by a simple annulment of the concession, thereby rendering itself liable to respond in damages to all parties injured thereby.

There is, however, another ground upon which in this case the Government of the Republic of Venezuela is liable for the face value and interest of these bonds. The taking possession of this railway seems to have been done not only by an annulment of the concession, but by a contract and agreement with the Venezuelan citizens interested therein, by which the Government expressly recognized and assumed the obligations of the railway, including these bonds, and this obligation was again expressly recognized when the road was sold to Clark.

There are only two possible views to be taken of the facts of this case—either the Government took possession of this railroad under a contract by which it assumed and agreed to pay these bonds, in which case there can be no question as to its liability therefor, or it usurped possession of this property without warrant or authority, and has hence to respond in damages, under the opinion of Sir Henry Strong and Mr. Dickinson above referred to.

We think it unnecessary to consider whether this usurpation of property amounted to or did not amount to a merger of the corporation in the Government. This rule of international law, to which we have referred, is not based upon any such consideration, but upon the broad principle that being itself a party to the contract from which the franchise or concession arises, the Government can not in such a case annul the concession and take over the property without making itself liable for damages to all the other parties except by proper judicial proceedings on notice for proper cause.

In either view, therefore, of the facts of this case the Government of Venezuela is liable for the face value of these bonds and interest.

IV.

It was not necessary for the claimant to first have recourse to the Venezuelan tribunals.

The concession under which this railroad was built seems to contain an express provision that international mediation should not be resorted to, but recourse should be had solely to the local tribunals for determination of any questions which might arise, and this is advanced, although not held, by the former commission as one of the objections to this claim. There are two answers to this proposition: First, as a matter of international law, as was expressly laid down by Sir Henry Strong and Mr. Dickinson in the case above referred to, where a government seizes property as to which it had granted a concession, as in this case; in other words, when the government itself becomes the wrongdoer it can not be heard to say that this is one of the questions which must be submitted to its local tribunals. The questions to which such a clause in the concessions had reference were necessarily questions arising under the concession and not a question of the liability of the government for destroying the concession.

By the express terms of the protocol by which this present Commission is appointed it is made to include all claims owned by citizens of the United States, thus giving this Commission express power to hear and determine all such claims, wholly irrespective of whether they have or have not been submitted to any local tribunal.

Again, the claimant was not bound to first attempt to foreclose the mortgage. The claim which is here made is not strictly upon the bonds, but it is a claim against the Venezuelan Government for its wrongful act in destroying the value of property upon which the bonds were issued by annulling the concession and itself taking over and usurping the property. The bonds and their interest are the measure of damages, but the cause of action is the wrongful act of the Government of Venezuela if it be the fact that the taking possession of the property was done by the Government of Venezuela without any contract or agreement to pay these bonds. If the fact be that the Government of Venezuela did agree to pay these bonds, then the cause of action is upon this contract of the Government of Venezuela, and it is liable upon this contract, wholly irrespective of the fact that it was not a party to nor originally obligated for the bonds. The taking possession of the property was a sufficient consideration for the contract on the part of the Government of Venezuela to pay the bonds, and it is a contract which the claimant has a right to enforce in this tribunal.

In either view of the case the Republic of Venezuela is liable.

V.

An award should be made in favor of the claimant for the full face value of the 46 bonds, with interest at 9 per cent from their date.

Whether the liability be regarded as one of contract, to wit, a contract assuming and agreeing to pay these bonds, as part consideration for the acquirement of the property, or as one in tort for the wrongful taking of the property and annulment of the concession, in either case, the liability is, as we have seen, clear; the amount is fixed by the face value of the bonds and their interest, and an award should be made accordingly.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

Claim of Henry Woodruff, No. 22.

ANSWER.

To the honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied the claim presented by the American citizen, Henry Woodruff, growing out of certain bonds issued by the Government of Venezuela, and respectfully shows to this tribunal:

The first time that this claim was presented to the commission of 1867-68 it was dismissed for want of the production of the original bonds; the commission of 1890 likewise dismissed it; it is, therefore, a finished matter and this tribunal is not competent to take cognizance of it.

The claim had its origin in the contract made on the 10th of January, 1859, with Messrs. Flanagan and Clark, associated with Messrs. Rojas and Marcano, for the construction of a railroad from Caracas to Petare, with the privilege of extending it as far as Guarenas and Guatire. The Government subscribed to 500 shares of the capital at the par value of \$100 each, and guaranteed to pay half of this sum when the necessary materials for the construction of the road were disembarked in Venezuela, and the other half when the road should be finished to Petare. Moreover, a concession was made of 8,000 acres of uncultivated land situated in the province of Caracas. The contractors were authorized to fix the limit of the capital at \$400,000 for that part of the line running between Caracas and Petare, with the right to increase this sum if they availed themselves of the privilege of extending it beyond. All the necessary materials were to be admitted free from customs duties. The work was to be begun and concluded within one year, taking into account unavoidable delays. The directors, employees, and laborers were exempt from military service in time of peace, except as regards military exercise. The concession was exclusive for the period of thirty-five years. There was one article—the twentieth—in which it was provided that all controversies arising out of the concession and relative to it should be determined by the courts of Venezuela in ordinary course of procedure, and that neither such

controversies nor any decision concerning them should be made the subject of an international claim.

Afterwards Flanagan and Clark entered into a separate contract with their associates, Rojas and Marcano, that they should do a part of the work; and other parties were added to the contract to the end of obtaining funds and engineers with which to carry the undertaking to completion.

As a result, men and materials arrived, including rolling stock, and it is said that there only lacked 30,000 pesos to complete the road as far as Petare. There was ready a locomotive of 18 tons, a passenger coach of the first class, another of the second, 6 baggage cars, 4 platform cars, 1 hand car, 666 tons of iron in rails, chains, frogs, spikes, and switch rails.

The contractors claimed then the first \$25,000 of the subscription from the Government, and, not obtaining it, it was declared they could not obtain possession of the rails, having moreover had difficulty in securing their disembarkation at La Guaira, which was in the power of the revolutionists.

On account of the disorders of the times and the necessity of using the laborers and kits of tools of the railroad in the service of the war, the materials remained in La Guaira exposed to the atmospheric inclemencies. The contractors thereupon proposed to the Government to buy their rights in the undertaking, or to permit them to reexport the materials; and, both propositions being denied, they determined to sell the materials and their rights to their Venezuelan associates, Rojas and Marcano, and to accept in payment 90 bonds of the *Compañía del Ferrocarril del Este*, at \$1,000 each, with interest at 9 per cent and secured upon first mortgage of the road, of the concession and its appurtenances. To the consignee of the rails, who had not been paid, 35 of these bonds were given for security of his debt; 55 remained. It seems that 46 of these are those claimed by Mr. Woodruff, and that the other 9 passed to the hands of Messrs. Rojas and Marcano.

Subsequently the purchasers transferred all their rights to the Government of Venezuela, which, canceling all pending subscriptions, including its own, proceeded to construct and make use of the road. It expended upon it the sum of 80,000 pesos. It directed the payment of 18,000 pesos for the rails in an order against the custom-house of La Guaira, admissible in discount of exportation duties. A concession for the road which had been made to an Englishman, Mr. Arthur Clark, was annulled, through his not having fulfilled the conditions of the conveyance, one of which was to charge him with all responsibility of the undertaking.

When Mr. Woodruff came to Caracas in 1864, he was notified that he ought to avail himself of his right to proceed against Clark, in whose possession the road then was. But, instead of listening to this counsel, or of appealing to other legal means of settling his claim, he confined himself to maintaining that by virtue of the retrocession of the contract by Messrs. Rojas and Marcano to the Government, the company became merged in the Government, with the obligation of liability for the nominal value of the bonds, with interest.

What is set forth above is an extract from the printed opinion of Commissioner Findlay, who undertook the task of showing the unreasonableness of the claim of Mr. Woodruff. For this reason, as well as because he or the other claimants, Flanagan, Bradley, Clark &

Co., with whose case his was joined, had submitted to the decision of the Venezuelan courts, Mr. Findlay, in accord with Mr. Andrade, decided that the claim should be dismissed. Why it was so disposed of without prejudice to its resubmission through some other channel is not explained in any way.

The commissioners formed an arbitration tribunal and did not have other powers than those conferred by the compromise, that is to say, in this case, the conventions of April 25, 1866 and December 5, 1885. According to article 5 of the former:

The decisions of this commission and those (in case there be any) of the umpire shall be final and conclusive as to all pending claims at the date of their installation. Claims which shall not be presented within the twelve months herein prescribed will be disregarded by both Governments and considered invalid.

Article 11 of the convention of 1885, says:

The decisions of the commission organized under this present convention shall be final and conclusive as to all claims presented or proper to be presented to the former mixed commission.

Only in this way could be carried out the compact which, as is set forth in the preamble, was to free from embarrassment the good understanding of both nations, by establishing a means of examining and justly terminating the pending claims of citizens of the United States against Venezuela, and thus obtaining at least some of the advantages attending arbitration, as recommended in article 112 of the federal constitution of Venezuela, in force at that time.

Now, then, a decision which leaves open to the claimants another channel for submission of their claim is neither final nor conclusive, much less if it is announced in the vague terms "without prejudice to its prosecution otherwise." A definitive or final sentence is one which, good or bad, but in a conclusive manner shall end a case forever, and is made from thenceforward the truth, according to the axiom "*res judicata pro veritate habetur*."

If Mr. Woodruff brings his cause before some other authority, notwithstanding that the commissioners did not designate it, such authority may admit the demand and revoke the decision by which it was dismissed, and thus it would be reduced to naught. Accordingly such a sentence by the Commission would overstep its powers through not holding it in the only and exclusive sense of a complete dismissal.

The claim must therefore be disallowed.

Caracas, July 13, 1903.

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Henry Woodruff, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 22.
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BAINBRIDGE, *Commissioner*:

On or about the 8th of January, 1859, the Government of Venezuela granted to José M. Rojas, Juan Marcano, John J. Flanagan, and William Hatfield Clark a concession to build a railroad from Caracas to Petare,

with the privilege of extending it to Guaranas and Guatire, and authorized the organization of a company or corporation for the purpose of building and equipping said road. Pursuant to this concession a company was organized in Caracas known as the "Compañía del Ferrocarril del Este" or "Company of the Railway of the East," which corporation acquired and held all the rights, powers, privileges, and franchises granted or pertaining to the said line of railway from Caracas to Petare and its extensions theretofore held by the parties named in the original concession. The capital stock of the company was fixed at 400,000 pesos for that part of the line from Caracas to Petare, the company having the right to increase this amount in case the road was extended beyond the latter point. The Government of Venezuela was an original subscriber to the capital stock of the company, taking 500 shares and agreeing to pay therefor into the treasury of the company the sum of 50,000 pesos; one-half of said amount was to be paid when all the material for the building of the road should be delivered in Venezuela, and the other half thereof when the railroad should be completed to Petare and open to the public.

On July 10, 1860, a contract was entered into in Caracas by and between Flanagan, Bardley, Clark & Co., a copartnership, successors in interest to John J. Flanagan, William Hatfield Clark, and James F. Howell of the one part, and José M. Rojas and Juan Marcano of the other part, which provided:

ARTICLE 1. Flanagan, Bradley, Clark & Co. sell, assign, and transfer by these presents to the Eastern Railroad Company, all the materials now in this country for the construction of the said railroad upon the following conditions:

ART. 2. The said Rojas, as president, and Juan Marcano as treasurer of the Eastern Railroad Company, will issue to order of Flanagan, Bradley, Clark & Co. ninety thousand dollars (\$90,000) United States currency in first-mortgage bonds secured by a first mortgage on the said railroad and all the buildings, effects, and lands which may now or hereafter belong to the said company as per grant of the Government of Venezuela bearing date January 8, 1859.

Article 5 of the contract provided that within one month from its date Rojas and Marcano would deliver to Flanagan, Bradley, Clark & Co. \$55,000 of said bonds, whereupon said firm would deliver to Rojas and Marcano the invoices of all the materials for the building of the railroad. Article 6 provided that whereas Flanagan, Bradley, Clark & Co. were indebted to Congreve & Son, for a balance on the iron then in the hands of Boulton & Co. in La Guayra, if they did not settle said amount within ninety days from the date of the contract Marcano was to pay said balance and hold as his own the remaining \$35,000 of bonds and apply the iron to the building of the road.

On the 24th of July, 1860, pursuant to said contract, José M. Rojas, as president, and Juan C. Marcano, as treasurer of the "Compañía de Ferrocarril del Este" executed a mortgage upon the railway with all its buildings, cars, effects, tools, lands, and all that belonged or might thereafter belong to said company, to secure the bonds provided for in article 2 of the contract. This mortgage is declared to be the only mortgage on said property, and was registered on the date of its execution. On the same date the company issued 90 coupon bonds, of \$1,000 each, United State currency, bearing 9 per cent interest. The bonds were in both Spanish and English and read as follows:

Republic de Venezuela, Caracas (Sur America).

Number —.

\$1,000.

Compañia del Ferrocarril del Este.

Eastern Railroad Company's first mortgage

Nine per cent coupon bond.

This bond of one thousand dollars United States currency is one of a series of ninety of like tenor and date issued to Flanagan, Bradley, Clark and Company by the Eastern Railroad Company and payable to bearer at the office of said railroad company in the city of Caracas on presentation of the coupons as they become due, which represents the principal and interest at nine per cent per annum and become due July 1st, 1862, \$323.33; July 1st, 1863, \$260.66; July 1st, 1864, \$243.41; July 1st, 1865, \$226.16, and July 1st, 1866, \$208.92.

These bonds are secured by a first mortgage upon said Eastern Railroad from the city of Caracas to Petare and all its buildings, fixtures, equipments, appurtenances, and all the lands belonging to said railroad company as per grant from the Government of Venezuela in the original charter (about 3,500 fanegadas) and bearing even date herewith. If any one of the coupons become due and remains unpaid for ninety days the whole shall be due and collectible upon a wish of a majority of the bondholders.

(Spanish.)

El Presidente,
JOSÉ M. ROJAS.El Tesorero,
J. C. MARCANO.

(Coupons annexed after signatures.)

Of the 90 bonds thus issued, 35 were held by Marciano as security for the debt due Congreve & Son for the iron rails according to the provisions of article 6 of the contract. This left 55 bonds remaining, of which number only 46, according to the memorial, were delivered to Flanagan, Bradley, Clark & Co. The remaining 9 were retained by Rojas and Marciano. The memorialist alleges that he is the holder and owner for valuable consideration of 40 of said bonds and that he is entitled to claim the indemnity in respect of the other 6.

On the 19th of December, 1863, the Government of Venezuela acquired all the rights of the railroad company through a cession made to it by the company, and continued in the sole possession of the road until the 20th day of April, 1864, when the Government transferred the railroad and everything connected therewith to one Arthur Clarke, a subject of Great Britain, said Clarke agreeing to deliver into the treasury of Venezuela \$80,000 in amount of legitimate public debt of the Government. Subsequently the contract with Clarke was annulled or abrogated at the instance of the Government of Venezuela, and the control and dominion over said enterprise and over the property and franchises of the corporation were resumed by the Government.

This claim was presented to the commission appointed under the treaty of April 25, 1866. The commission caused the papers to be returned to the United States legation with the following indorsement thereon:

Dismissed this day from further consideration for want of the original bonds, or a legalized copy thereof not presented, and further documents equally required, but in nowise affected or invalidated by said action.

The claim was also presented to the commission appointed under the treaty of December 5, 1885, and this commission, upon consideration and in relation to the claim, made upon its docket the following entry:

Dismissed without prejudice to other prosecution of the claim.

The learned counsel for Venezuela insists in his answer that this claim is *res adjudicata*. But this position can hardly be sustained, in view of the fact that the first commission expressly declared the claim was in nowise to be affected or invalidated by its action in dismissing the case, and that an examination of the grounds on which the second commission based its dismissal shows that it was because the commissioners were of the opinion that "the cause of action has been misconceived and proofs therefor not supplied that otherwise might have been forthcoming." The claim is clearly one owned by a citizen of the United States of America, *which has not been settled by diplomatic agreement or by arbitration*, and hence within the jurisdiction of this Commission under the terms of article 1 of the protocol.

Various legal technicalities have been and still are insisted upon in relation both to the presentation and the defense of the claim. It is not deemed necessary to review these here. Substantially the facts are that Flanagan, Bradley, Clark & Co. sold, assigned, and transferred to the Eastern Railroad Company all the materials for the construction of said railroad which they had bought or contracted for and brought to Venezuela with which to build the road. In consideration thereof, Rojas and Marcano, acting for the Eastern Railroad Company, issued to Flanagan, Bradley, Clark & Co. the 90 bonds of \$1,000 each, payable to bearer, and as security for the same executed a mortgage on the property thus sold, and also on all other property of the railroad company. Of the 90 bonds thus issued only 46 were actually delivered to Flanagan, Bradley, Clark & Co., and these 46 bonds undoubtedly represent the estimated value of the property owned by that firm and sold in the manner indicated to the railroad company. Besides the 660 tons of iron rails, for which they owed Congreve & Son, and on account of which debt 35 of the bonds were retained by the company, the property delivered by said firm to the company consisted of a locomotive weighing 18 tons, a first-class passenger car, a second-class passenger car, six box cars, four platform cars, and a hand car.

This was in 1860. Three years later the railroad company transferred to the Government all the property, rights, privileges, and franchises of the company. And on April 20, 1864, the Government, as "sole owner of the enterprise of the Railroad of the East," transferred to Arthur Clarke all appertaining to the road, and in consideration thereof Clarke agreed to deliver to the ministry of the treasury of Venezuela within six months eighty thousand and odd dollars of the legitimate debt of the Government.

It is a fact not without significance that the amount of "legitimate debt of Venezuela," agreed to be paid to the Government by Clarke, corresponds with the estimated valuation of the railway material represented by the outstanding bonds, deducting the nine bonds which appear to have been retained by Rojas and Marcano out of the 90 issued. It would seem not an unfair inference that Venezuela recognized an obligation as to the bonds or as to the material which the bonds represented, and that the conveyance to Clarke was subject to his obtaining the outstanding bonds and delivering them to the Venezuelan treasury. Clarke, indeed, made an offer of £3,500 for the bonds through the Venezuelan consul in London on September 16, 1864, to John Bradley. The consul, Mr. Hemming, says: "To enable him to do this (i. e., carry on the Eastern Railway), the Government

has to take up the bonds held by you, and to facilitate matters so that they may at once begin the work Mr. Clarke authorized me to offer you £3,500 sterling for all the bonds in question." But Clarke failed to comply with his contract with Venezuela, and it appears to have been afterwards annulled and the property reverted to the Government.

The Government paid Congreve & Son for the rails the sum of 19,264.39 pesos, and the company on December 19, 1863, turned over the 35 bonds retained on that account to the Government. Liability for the other property delivered by Flanagan, Bradley, Clark & Co., and represented by the 46 bonds outstanding, rested upon the same basis, namely, that Venezuela received the property, but no arrangement as to this property was made with the holders of the bonds and, as shown, the contract with Clarke was abrogated.

It is true the bonds were secured by the mortgage given by the railroad company, but the bonds are the real indicia of the indebtedness. The Government, after December 19, 1863, held the mortgaged property and the claimant elected to rely upon the responsibility of the Government instead of on the security. This he had a perfect right to do.

I am of opinion that an award should be made in this claim in accordance with the foregoing views. As to interest, the legal rate only should be allowed after the bonds had matured.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of Henry Woodruff, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 22.
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Doctor PAÚL, *Commissioner*:

Henry Woodruff claims from the Government of Venezuela the payment of the value of 46 bonds, representing the sum of \$46,000, issued by a corporation called "Railway of the East," which originated from a concession granted by the Government of Venezuela on January 10, 1859, in favor of Messrs. Juan Marcano, José Maria Rojas, and Flanagan & Clark, and also claims the interest on said bonds, at 9 per cent per annum, from July 24, 1860, amounting to \$176,182.42, making a total sum of \$222,182.42.

The same claim for the amount represented by the bonds and interest thereon was presented by Woodruff, consecutively, to the two mixed commissions created by the conventions agreed upon between Venezuela and the United States of America on April 25, 1866, and December 5, 1885. Both commissions dismissed Mr. Woodruff's claim for lacking sufficient proofs in which the responsibility of the Government of Venezuela could be found, but without prejudice for the claimant to prosecute other action in protection of his rights. This decision, in neither of the two cases, recognized for its cause the lacking of jurisdiction of both commissions to examine and decide upon the claim presented, although Mr. Findlay, commissioner on the part of the United States, was of the opinion that the commission of 1889 was lacking in jurisdiction in this case for reasons mentioned in his opinion

in which he decided that the claim should be disallowed. He states in his separate decision the merits of the case, as follows:

As far as these claims (Henry Woodruff and Flanagan, Bradley, Clark & Co., Nos. 20 and 25) are based upon a breach of contract, or upon bonds issued in furtherance of the enterprise, we are of opinion that the claimants, by their own voluntary waiver, have disabled themselves from invoking the jurisdiction of this commission, and for that reason, as well as that the cause of action has been misconceived and proofs therefor not supplied that otherwise might have been forthcoming, we will disallow the claims and dismiss the petitions without prejudice.

Consequently, by a vote of the majority of the members of the commission of 1890, charged with the revision of the awards of the mixed commission of 1867, that dismissed the claims of Woodruff & Flanagan, Bradley, Clark & Co., both claims were dismissed anew.

The protocol signed at Washington the 17th day of February of this year, which created the present Commission, establishes in the first article its jurisdiction, limiting the same to the claims owned by citizens of the United States of America against the Republic of Venezuela that have not been settled by diplomatic arrangement or by arbitration between the two Governments and that are presented through the Department of State or through the United States legation at Caracas. Two requisites are thus necessary for this Commission to examine and decide on a claim owned by an American citizen: First, that it had not been settled by diplomatic arrangement or by arbitration between the two Governments, and, second, that it be presented through the Department of State of the United States or through its legation at Caracas.

What is understood by a claim having been settled or not by arbitration between the two Governments? In my opinion a claim that has been the object of an arbitration between the two Governments and which has been disallowed by a judgment of the arbitral commission charged with its examination, not having found merits enough on which an award against the Government of Venezuela could be founded, has been settled. In no other way could the object of these international commissions be considered as reached, and which object is to decide in a definite manner the disputes arising between the citizens of one of the two countries against the other, causing trouble and complaints in the political relations of both countries. For these reasons treaties and conventions are made and signed, giving exceptional faculties to mixed courts composed of judges appointed by the high contracting parties, and in such virtue the convention made between Venezuela and the United States on the 25th of April, 1866, distinctly contains in its article 5 the following stipulation:

The decisions of this commission and those (in case there may be any) of the umpire, shall be final and conclusive as to all pending claims of the date of their installation. Claims which shall not be presented within the twelve months herein prescribed will be disregarded by both Governments and considered invalid.

And by article 11 of the convention between the same Governments, of December 5, 1885, which had for its object the revision of the awards of the previous commission, and to examine and decide on all claims owned by corporations, companies, or individuals, citizens of the United States, against the Government of Venezuela, which may have been presented to their Government or legation in Caracas before the 1st of August, 1868, it was agreed "that the decisions of the commission organized under this present convention shall be final and con-

clusive as to all claims presented or proper to be presented to the former mixed commission."

The explanation given by the commission of 1890, in the dismissal of the Woodruff claim, that it was so dismissed without prejudice of other actions of the claimant, does not mean that it was left pending between the two Governments. If this meaning should be given to the mentioned decision it would be contrary to the intended object of the Mixed Commission, which special object was to finally settle all the pending claims of corporations, companies, or individuals, citizens of the United States, against the Government of Venezuela.

As it has already been said, the Woodruff claim was not the object of a declaration of lack of jurisdiction by any of the two commissions, but of lack of any foundation that could justify it; and to pretend now that the present Commission should examine anew the same claim, for demand of payment from the Venezuelan Government of the nominal value of the same bonds issued by the "Eastern Railway Company" and the interest thereon, changing only the reasons or motives in which the claimant pretends to base the responsibility of the Government of Venezuela, trying to make that responsibility arise from facts and circumstances that were known to the claimant at the time he presented it to the two previous mixed commissions, it would be to consent in the indefinite duration of the claim, as there would not be one claimant that, having had his claim disallowed, could not present it anew, making new arguments on facts not mentioned in the previous trials. Such action would completely destroy the high mission of the arbitration courts, especially in the international disputes that from their nature require the greatest efficiency in the stability of the judgments and their definite settlement.

The Commissioner for Venezuela does not consider as indispensable, after what has been said, to make a study of the new foundation on which Mr. Woodruff bases the same claim presented for the first time against the Government of Venezuela to the commission of 1867—thirty-six years ago. The appreciation of the merits of the new arguments has been already made with the high spirit of equity and with a learned criticism by the honorable Mr. Findlay, commissioner for the United States in 1890, in his opinion on this case. I have only to add that the claimant has not presented the proof of any new fact that could in any way change the estimation made by the commission of 1890, and which caused the dismissal of the claim; on the contrary, this Commission has had occasion to examine the documents existing at the department of fomento in which is found the decision of the meeting of the shareholders of the Eastern Railway Company, dated at Caracas, on December 19, 1863, and by which said railway was surrendered to the Venezuelan Government, and I have not found in that decision any data showing that said Government did directly accept the responsibility for the payment of the bonds issued by said corporation in favor of the first contractors of the works, that were also the grantees of the same and subscribers for the larger part of the shares. I have also perused the communication addressed on September 14, 1865, by said Henry Woodruff to the secretary of foreign affairs, in which he says:

I have been informed by the Government that my rights on the lands, iron rails, fixed effects, and road materials was perfect and indisputable, and it is so by the mortgage of security. The conditions of the mortgage not having been complied

with, I have, consequently, perfect right to the ownership of the property. Will the Government now consent, so that all things included in the mortgage, after due notice, be sold at public auction to the best bidder and the proceeds applied to the payment of the bonds? I only ask for the consent to exercise a right that has not only been acknowledged by the Government, but insisted on its exercise when they acted against third party. When the interested parties are perfectly in accord in the acknowledgment of the rights, it would not only be insane but an offense to incur in the necessary delay and expenses for the judicial foreclosure of a mortgage.

Mr. Woodruff well knew in 1865 his right on the mortgage that secured the payment of the bonds, and he made no use of that right in the subsequent years, though the Government of Venezuela presented no difficulty for the enforcing of such right through the courts. He abandoned the property that was given him as security, and, knowing all the particulars in reference to the bonds, he presented his claim to the commission of 1867, pretending to base the responsibility of the Government of Venezuela on a breach of contract, and alleged a lack of documents that he affirmed were in the possession of the Government of Venezuela, while it appears, from the above-mentioned records, that on October 8, 1864, Mr. Woodruff asked for copies of the deed by which Messrs. J. M. Rojas and Juan Marcano made a cession of the enterprise to the Government and of the inventory of the railway made in consequence of said cession. The opinion of Mr. Findlay could be quoted here:

We see no reason why immediate and effective proceedings might not have been taken to foreclose or sell the road under the mortgage, which contained full power of sale.

Instead of taking this advice or resorting to any legal step to enforce his claim either against Clark or under the mortgage, he (Mr. Woodruff) assumes at the outset the position that Venezuela, by what we may call the Rojas-Marcano retrocession, had obliterated or rather merged the corporation, and in doing so had assumed the liability of paying the face value of its bonds with accrued interest to date.

Venezuela had nothing more than an equity of redemption, and, had any individual received the assignment, it would never have been contended that he became personally liable for the debts of the concern.

* * * * *

Venezuela neither issued nor indorsed the bonds in question. They were issued by the parties themselves, and unless business is done on different principles in Venezuela than in other parts of the world we must believe that Flanagan, Bradley, Clark & Co., by virtue of the potential ownership of a majority of the stock, and their general relation to the enterprise under the construction contract, must have had an equal voice with their associates in the issue of the bonds. When they received them, at least, there could have been no pretense that Venezuela was responsible. Neither by the terms of the concession nor by any contract or connection, direct or remote, express or implied, with the transaction, has she assumed any responsibility. * * * Why the claimant did not proceed to make good his debt out of the mortgage security he held instead of pursuing the claim against the Government upon the theory of merger is altogether unexplained either by the papers or anything that was said at the arguments.

Had not this claim been already settled by arbitration, this court of equity could also consider the question whether the bonds represented a nominal value equivalent to the real amount of the debt which caused them to be issued, as it must be remembered that said bonds were issued by agreement between Flanagan, Bradley, Clark & Co., both as original grantees of the enterprise and as contractors, that they were to receive a number of shares that represented the largest part of the capital of the company in payment of their credit as constructors; and that when the 90 bonds for \$1,000 each were issued

Messrs. Rojas and Marcano retained 35 of them that represented the credit of C. Congrove & Co., of New York, amounting to \$19,264.39 (Venezuelan pesos), owed to them for rails. This sum represented one-half of the nominal value of the bonds. Neither Flanagan, Bradley, Clark & Co. nor Woodruff presented to the previous commissions, nor has the latter presented to this, any proof that the nominal value of the bonds corresponded to the just value of the effects and materials for which payment they were a security. All these considerations were, doubtless, the reasons why the commission of 1890 considered in justice and equity, without foundation, the pretension to make the Government of Venezuela responsible for the value of the bonds in question, and for the interest thereon, and caused the claim of Henry Woodruff to be disallowed.

For the above reasons it is my opinion that said claim has already been the object of a judgment of the mixed commission of 1890, and was dismissed for lack of foundation, and therefore this Commission should entirely disallow it for want of jurisdiction to reconsider a case that has been already definitely settled by the arbitral commission of 1890.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Henry Woodruff, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 22.
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The UMPIRE:

A difference of opinion having arisen between the Commissioners of the United States of America and the United States of Venezuela, this case was duly referred to the umpire.

The umpire having fully taken into consideration the protocol and also the documents, evidence, and arguments, and likewise all the communications made by the two parties, and having impartially and carefully examined the same, has arrived at the following decision:

Whereas in this case the United States of America presents the claim of Henry Woodruff, to recover the face value of 46 bonds of \$1,000 United States currency each, together in the sum of \$46,000, with interest at 9 per cent per annum from July 24, 1860; and

Whereas these 46 bonds form part of the 90 bonds of \$1,000 United States currency which José M. Rojas and Juan Marcano, as president and treasurer of what they called the "Eastern Railroad Company," issued by order of Flanagan, Bradley, Clark & Co., and which bonds were secured by a first mortgage on the said Eastern Railroad, and all the buildings, effects, and lands, which may now or hereafter belong to said company as per grant of the Government of Venezuela, bearing date of January 8, 1859; and

Whereas this grant was made by the same contract by which the Government of Venezuela did grant to said Juan Marcano and others a charter for the construction of a railroad from the city of Caracas to Petare, with the privilege of extending the same, and authorizing the

organization of a company or corporation for the purpose of building and equipping the same; and

Whereas, on the 19th of December, 1863, said José M. Rojas and Juan Mercano made a cession of all the rights of the railroad company to the Government of Venezuela, which the Government transferred the same to one Arthur Clarke by contract of the 20th of April, 1864, this contract being annulled later on, and the right of the railroad company returning thereby to the Government.

Whereas, therefore, the question of the liability for the bonds issued through the so-called "Eastern Railroad Company" and secured by mortgage on all the belongings of said company, involving the questions on the rights and duties of this company, and the scope of the transfer of these rights and duties from the company to the Government, from the Government to Arthur Clarke, and from Arthur Clarke back to the Government, centers in the question about the original rights and duties of said company arising from the contract by which the concession for the railroad and the permission for the organization of the company was granted, this contract has in the first place to be contemplated.

Now, whereas article 20 of this contract reads as follows:

Doubts and controversies which at any time might occur in virtue of the present agreement shall be decided by the common laws and ordinary tribunals of Venezuela, and they shall never be, as well as neither the decision which shall be pronounced upon them, nor anything relating to the agreement, the subject of international reclamation.

And whereas this claim to recover from the Venezuelan Government the face value of the bonds issued through the president and treasurer of the Eastern Railroad Company based on the hypothesis of a transferring of the rights and duties of that company to the Government of Venezuela, doubts and controversies on the liability of the Venezuelan Government in this question, must be regarded as doubts and controversies which occur in virtue of said agreement, and certainly are "relating to that agreement."

Wherefore they must be considered as being meant by the contracting parties never to be transferred for adjudication to any tribunal but to the ordinary tribunals of Venezuela and to be there determined in the ordinary course of the law; and

Whereas bondholders—at all events the original bondholders—from whom the later owners and possessors derive their rights, before accepting these bonds knew, certainly ought to know, and must be supposed to know on which foundation stand the power and the solidity to which they give credit by accepting these bonds;

Whereas at all events those who accept bonds of a company or corporation know—certainly must be supposed to know—the statutes and conditions from which this company or corporation derives its powers and rights, and—as to these bonds—to have adhered to them in regard to the bondholders as well as in regard to the company or corporation the articles of the fundamental agreement have to be applied.

Furthermore, whereas certainly a contract between a sovereign and a citizen of a foreign country can never impede the right of the government of that citizen to make international reclamation, wherever according to international law it has the right or even the duty to do

so, as its rights and obligations can not be effected by any precedent agreement to which it is not a party;

But whereas this does not interfere with the right of a citizen to pledge to any other party, that he, the contractor, in disputes upon certain matters will never appeal to other judges than to those designated by the agreement, nor with his obligation to keep this promise when pledged, leaving untouched the rights of his government to make his case an object of international claim whenever it thinks proper to do so, and not impeaching his own right to look to his government for protection of his rights in case of denial or unjust delay of justice by the contractively designated judges;

Whereas therefore the application of the first part of article 20 of the aforesaid agreement is not in conflict with the principles of international law, nor with the inalienable right of the citizen to appeal to his government for the protection of his right whenever it is in any way denied to him, equity makes it a duty to consider that part of article 20 just as well as all other not unlawful agreements and conditions of said contract, wherever that contract is called upon as a source of those rights and duties whereon a claim may be based.

Now, whereas it might be said, as it was said before, that by the terms of the protocol the other party, viz, the Government of Venezuela, had waived her right to have questions arising under the agreement determined by her own courts, and had submitted herself to this tribunal, it is to be considered that even in the case of this claim as a claim against the Venezuelan Government owned by an American citizen, being a claim that is entitled to be brought before this Commission, the judge, having to deal with a claim fundamentally based on a contract, has to consider the rights and duties arising from that contract, and may not construe a contract that the parties themselves did not make, and he would be doing so if he gave a decision in this case and thus absolved from the pledged duty of first recurring for rights to the Venezuelan courts, thus giving a right, which by this same contract was renounced, and absolve claimant from a duty that he took upon himself by his own voluntary action; that he has to consider that claimant knew, at all events ought to have known when he bought the bonds, or received them in payment, or accepted them on whatsoever ground, that all questions about liability for the bonds had to be decided by the common law and ordinary tribunals of Venezuela, and by accepting them agreed to this condition; and

Whereas it does not appear that any appeal of that kind was ever made to the Venezuelan courts, it must be concluded that claimant failed as to one of the conditions that would have entitled him to look on his claim as on one on which a decisive judgment might be given by this Commission; and

Whereas, therefore, in the consideration of the claim itself it appears out of the evidence itself, laid before the Commission, that claimant renounced—at all events adhered to the renunciation of the right to have a decision on the claim by any other authority than the Venezuelan judges, and pledged himself not to go—at all events adhered to the promise of not going to other judges (except naturally in case of denial or unjust delay of justice, which was not only not proven but not even alleged), and that by the very agreement that is the fundamental basis of the claim it was withdrawn from the jurisdiction of this Commission.

Wherefore, as the claimant by his own voluntary waiver has disabled himself from invoking the jurisdiction of this Commission, the claim has to be dismissed without prejudice on its merits when presented to the proper judges.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

DECISION.

THE UNITED STATES OF AMERICA ON BEHALF of Henry Woodruff, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 22.
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The above-entitled claim is hereby dismissed without prejudice on its merits.

HARRY BARGE, *Umpire*.

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered October 2, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of William V. Spader et al., heirs and legatees of Admiral Louis Brion, deceased, claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 23.
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This claim was presented to the Commission on the memorial of the claimants, and was supported at the time of presentation by the agent of the United States in an oral argument. A brief was filed by the agent of Venezuela in answer.

[Translation.]

MARY E. SPADER AND HEIRS OF ADMIRAL LOUIS BRION v. VENEZUELA.	}	No. 23.
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ANSWER.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of Venezuela, has studied the claim presented by Mary E. Spader and other heirs of Admiral Louis Brion, and respectfully shows to the tribunal:

The right which the heirs of Admiral Brion might have had to claim from Venezuela the portion of the debts of the old Republic of Colombia which it should have paid, according to the stipulation in the convention of Bogotá of 1834, has been barred. When the commission of 1867-68 was sitting this claim was not presented, and, in accordance with the convention which created that commission, ought to be considered null and void by both Governments.

The commission of 1890, to which this claim was presented, disallowed it, basing its decision on the ground above stated. The matter is, therefore, *res judicata*.

The undersigned deems it useless to repeat in the present case the argument set forth in the claim of Woodruff, which has been made under similar circumstances to the present, and, referring to it, asks that this claim be declared inadmissible.

Caracas, July 13, 1903.

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF OF William V. Spader et al., heirs and legatees of Admiral Louis Brion, deceased, claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 23.
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DECISION.

Opinion by Bainbridge, Commissioner.
Claim disallowed.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF OF William V. Spader et al., heirs and legatees of Admiral Louis Brion, deceased, claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 23.
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BAINBRIDGE, *Commissioner*:

William V. Spader, claimant herein, states that he is a citizen of the United States of America, and that he is the only child and sole heir at law of Mary Elizabeth Franken Spader, deceased, who was the sole legatee under the last will and testament of Maria Josepha Brion Franken, who was one of the legatees and beneficiaries under the last will and testament of Louis Brion, usually known as Admiral Louis Brion, who died on the 21st day of September, 1821.

The memorial sets forth certain claims against the Republic of Venezuela in favor of Admiral Louis Brion for services rendered by the latter in the cause of Venezuelan independence. Admiral Brion left his estate to his brother, who died shortly afterwards intestate and unmarried, and to his three sisters, Maria Josepha, Charlotte, and Helena. Maria Josepha Brion married Morents E. Franken in

Curaçao, and after her husband's death removed to the United States, where she died in 1859, bequeathing all her estate to her daughter Mary Elizabeth Franken, who married Kroson T. B. Spader. Mary E. Spader was naturalized as a citizen of the United States April 29, 1865. Charlotte Brion married Joseph Foulke, a merchant of New York. She died in 1846.

William V. Spader claims that he and the other proper parties, heirs of Admiral Brion and citizens of the United States, are entitled to be paid by and to receive from the Republic of Venezuela the two-thirds part of the indebtedness of the Republic of Venezuela to the estate of Admiral Brion.

It appears from the record that this claim originated between the years 1810 and 1821. Citizens of the United States had, or appear to have had, interest in the claim prior to 1846. It was first brought to the attention of the United States Government, so far as the evidence shows, on November 1, 1889. No reason or explanation is given for delay in presentation. It was submitted to the commission created by the convention of December 5, 1885, between the United States and Venezuela. The commission dismissed it, without prejudice, for want of jurisdiction. It does not appear in evidence when or in what manner the claim was ever otherwise brought to the attention of the Government of Venezuela.

A right unasserted for over forty-three years can hardly in justice be called a "claim."

Prescription [says Vattel] is the exclusion of all pretensions to right—an exclusion founded on the length of time during which that right has been neglected.

All sorts of prescription by which rights are acquired or lost are grounded upon this presumption, that he who enjoys a right is supposed to have some just title to it, without which he had not been suffered to enjoy it so long; that he who ceases to exercise a right has been divested of it for some just cause; and that he who has tarried so long a time without demanding his debt, has either received payment of it, or been convinced that nothing was due him. (Domat. Civil and Public Law, 483.)

The same presumption may be almost as strongly drawn from the delay in making application to this Department for redress. Time, said a great modern jurist, following therein a still greater ancient moralist, while he carries in one hand a scythe by which he mows down vouchers by which unjust claims can be disproved, carries in the other hand an hour glass, which determines the period after which, for the sake of peace, and in conformity with sound political philosophy, no claims whatever are permitted to be pressed. The rule is sound in morals as well as in law. (Mr. Bayard, Secretary of State, to Mr. Muruaga, Dec. 3, 1886; Wharton Dig. Int. Law, Appendix vol. 3, sec. 239.)

While international proceedings for redress are not bound by the letter of specific statutes of limitations, they are subject to the same presumptions, as to payment or abandonment, as those on which statutes of limitations are based. A government can not any more rightfully press against a foreign government a stale claim which the party holding declined to press when the evidence was fresh than it can permit such claims to be the subject of perpetual litigation among its own citizens. It must be remembered that statutes of limitations are simply formal expressions of a great principle of peace which is at the foundation not only of our own common law, but of all other systems of civilized jurisprudence. (Wharton Dig. Int. Law, Appendix vol. 3, sec. 239.)

It is doubtless true that municipal statutes of limitation can not operate to bar an international claim. But the reason which lies at the foundation of such statutes, that "great principle of peace," is as obligatory in the administration of justice by an international tribunal as the statutes are binding upon municipal courts.

In the case of *Loretta G. Barberie v. Venezuela*, decided by the United States and Venezuelan Commission of 1889, Mr. Commissioner Findlay said:

A stale claim does not become any the less so because it happens to be an international one, and this tribunal in dealing with it can not escape the obligation of an universally recognized principle, simply because there happens to be no code of positive rules by which its action is to be governed.

The claim is disallowed.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of William V. Spader et el., heirs and legatees of Admiral Louis Brion, deceased, claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 23.
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The above-entitled claim is hereby disallowed.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAUL,
Commissioner on the part of Venezuela.

Attest to decision.

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered August 21, 1903.

Before the Mixed Commission organized under the portocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Charles W. Torrey, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 24.
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BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of Charles W. Torrey for damages for false arrest, imprisonment, and unlawful detention, and for personal indignities in connection therewith.

The claimant is a native-born American citizen. His complaint relates to his arrest at La Guaira on May 9, 1876.

The facts, which are amply supported by the memorial and former protest of Mr. Torrey himself, and by the protest of Messrs. Nostrand and Bartram, are briefly that the claimant, having been for a few days at Caracas, and being desirous of returning to New York and stopping at Curaçao on the way, applied for a passport to Curaçao, but was informed that the Venezuelan Government would not issue a passport to Curaçao, but would issue him a passport to New York, which was done. Thereupon, Mr. Torrey undertook to take passage upon an English vessel bound for Curaçao, intending to there take a vessel for New York, it being at that time the shortest way to reach New York, to

go by the way of Curaçao, changing vessels at that point. While on the way in the harbor to the vessel, a boat was sent after them by the Venezuelan authorities, under express instructions, by telegram, of the government at Caracas, and the claimant and the two other gentlemen above referred to were arrested and brought back to port, and confined in jail for several hours. They offered to give bonds, and requested to be allowed to go to their hotel under guard, but this was refused, and they were confined in a common jail with the lowest criminals, and under most disgusting surroundings. Proper representation to the government at Caracas having been made by the United States consul, the claimant and the other gentlemen with him were released.

These facts, as appears from the diplomatic correspondence between the United States and the Government of Venezuela, are not in any way disputed by the Venezuelan authorities.

The claim is for damages not only for an illegal arrest, but for the unnecessarily harsh and arbitrary treatment to which the claimant was subjected while in detention.

There can be no question, from a legal standpoint, of the liability of the Republic of Venezuela to respond in damages to the facts of this case. See the cases of this character which have arisen before similar commissions, collated by Mr. Moore in his work on International Arbitration, Volume IV, pages 3235, et seq.

In the cases there collated, there was universally held to be a liability for an arrest and imprisonment without cause, and for harsh and arbitrary treatment during the imprisonment, whether the arrest was based upon probable cause or not.

It is manifest, in the first place, that the arrest in this case was wholly unwarranted. The fact that claimant had obtained a passport for New York and then took a vessel for Curaçao was no offense against the Government of Venezuela. It was not in a state of war with the Dutch Government, nor were there any circumstances under which it had a right to dictate whether citizens of the United States leaving Venezuela should or should not go to Curaçao. There would have been nothing illegal or criminal in Mr. Torrey's going to Curaçao without a passport, nor in his changing his mind and concluding to go to Curaçao after getting a passport to New York, but in this case he intended to go to New York and simply chose to go by the way of Curaçao. The whole transaction shows a most arbitrary and uncalled-for arrest and false imprisonment.

Moreover, the refusal to take bond, or to allow the claimant to stay at his hotel under guard while the matter was being investigated, and the vile quarters in which he was imprisoned, were all indignities to which Mr. Torrey was unnecessarily subjected.

The original memorial of Mr. Torrey, presented to the State Department of the United States, asked for damages in the sum of \$50,000. By a supplemental memorial, under date of May 9, 1903, this is reduced by Mr. Torrey to \$10,000.

We submit that this is a moderate and reasonable claim for the indignities to which Mr. Torrey has been subjected by the authorities of the Venezuelan Government, and that an award should be made in that amount.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

Charles W. Torrey. Claim No. 24.

Honorable Members of the Mixed Venezuelan-American Commission:

The undersigned, agent of the Government of Venezuela, has studied the claim presented by the American citizen Charles W. Torrey, and respectfully states to the tribunal:

In May, 1876, at a time of disturbance in the country, since it was expected that Holland would communicate an ultimatum through the medium of its squadron, which had just arrived in the vicinity of the island of Curaçao, the Government, in the full exercise of its powers, ordered certain measures to be complied with by passengers leaving for foreign parts. Mr. Torrey, who at that time resided in Caracas, took out a passport to depart directly to the United States, but arrived at La Guayra, ignoring the legal prohibition, he took out, in the agency of the vessel in which he was going to leave, passage for Curaçao. The police authorities being advised of this, prevented the departure of Mr. Torrey and put him under arrest until light could be shed upon the matter.

Two points appear clearly proved in the proceedings—the police measure ordered by the Venezuelan authorities and the intention to violate it on the part of the claimant.

With regard to the former, the undersigned believes that the right of Venezuela to order that measure, which imposed public security at that time, is not to be discussed; with regard to the second, even though it might have happened that the claimant was ignorant of the existence of such an order, his ignorance could not excuse him, under the principle of law which states: Ignorance of the law is no excuse for its fulfillment. At all events, the procedure of the police authorities was correct.

For the rest, the arrest of Mr. Torrey had a duration of only a few hours and the Government of the Republic, in consideration of the nation to which he belonged and informed of his good conduct in the country, even went to the extent of detaining the vessel in which he should have sailed, in order that he should not lose the voyage.

The insults and damages of which Mr. Torrey complains are not proved in any manner.

This affair was the cause of lengthy diplomatic correspondence, at the conclusion of which the Government of the United States, convinced of the reason which supported Venezuela, considered the matter closed and declared itself satisfied, refusing the intervention asked by the claimant, as is shown by the letter from Mr. Bayard, set forth in the papers filed.

The claim, lacking, as it does, all foundation of fact or law, should be rejected.

Caracas, July 13, 1903.

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Charels W. Torrey, claimant, v. THE REPUBLIC OF VENEZUELA,	}	No. 24.
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DECISION AND AWARD.

Opinion by Doctor Paúl, Commissioner.

The Commission awards in favor of the claimant the sum of \$250 United States gold.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Charles W. Torrey, claimant, v. THE REPUBLIC OF VENEZUELA,	}	No. 24.
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Doctor PAÚL, *Commissioner*.

Charles W. Torrey claims from the Government of Venezuela the sum of \$10,000 for damages caused by unjust arrest at the port of La Guayra, on May 3, 1876, and for personal illtreatment in connection therewith.

The memorialist bases his pretention on the following facts:

Early in the year 1876 he went to Curaçao for health and pleasure. Shortly after his arrival there he concluded to go to Venezuela to see the country and visit its capital, Caracas. After remaining in Caracas for about a week he concluded to return to Curaçao by the English royal mail steamer *Severn*. On the 9th of May, 1876, after having obtained a passport with all the necessary visés by the authorized officers of the Venezuelan Government in Caracas, he started for La Guayra, where he intended taking the steamer *Severn* back to Curaçao. With him at the same time were a Mr. Bartram and Dr. Elbert Nostrand, also citizens of the United States. The steamer was lying out in the stream, and the three embarked on a boat belonging to said steamer to reach it. While on the way to said steamer they were hailed from shore and ordered back and commanded to report to the civil officer in charge at La Guayra. This officer ordered them all to be imprisoned in the common jail. Torrey claims that he was lodged in a cell with many low prisoners, his cell containing no other accommodation or furniture than a common table and a set of wooden stocks. His request to remain at the hotel under guard, although he was suffering from an attack of inflammatory rheumatism, was arbitrarily refused, and he was taken to jail, and kept in said prison for four hours. He was released through the immediate exertions of the United States consul at La Guayra and the United States representative at Caracas, and he took the steamer bound for Curaçao the same evening at 7 o'clock.

Among the documents presented there is a copy of the communication addressed on the 12th of June, 1885, by the honorable Secretary

of State, T. F. Bayard, to Mr. Torrey, in reference to his claim, which in itself is sufficient to fix the appreciation that this Commission must make about the fact of the unjust arrest suffered by Mr. Torrey for a few hours in the port of La Guayra. Said communication reproduces the opinion of Mr. Evarts, Secretary of State, contained in a letter addressed by him to the said claimant on April 5, 1877, after having examined the voluminous diplomatic correspondence caused by this affair. This opinion was as follows:

Though the Department would have preferred that the apology for your arrest should have come directly from that functionary (President Guzman Blanco), the fact that he ordered his chief of police to make it, may be regarded as sufficient. Your complaint may, however, be taken into consideration when diplomatic intercourse with Venezuela shall be resumed, but you (Mr. Torrey) must not expect that this Department will authorize a demand for vindictive damages.

Mr. Bayard in the same communication adds:

Under the circumstances of the case, as herein presented, further diplomatic intervention in your behalf is thought to be neither expedient nor proper. The Department must, therefore, regard the matter as practically closed, unless you can show to it that the apology made was not a sufficient atonement for the injury done to you, or that an error has accrued to your prejudice in the Department's decision.

This decision need not, however, prejudice your ultimate rights if you see fit to present and support a claim before any international tribunal which may hereafter be organized to take cognizance of cases arising since the award of the late Caracas Commission.

As it appears from the above communications, and as it is plainly shown by the voluminous correspondence between the two departments of foreign affairs of both Governments, the incident of the four hours' arrest of the American citizen, Charles W. Torrey, in the port of La Guayra, was the act of a local officer and was due to special circumstances of that epoch, in which act there was no intention to hurt by any means the person of an American citizen, and, on the contrary, the same gave occasion for the President of the Republic, General Guzman Blanco, as soon as he knew of said arrest to order by telegraph that the prisoners be put at liberty; thus:

ELECTRIC TELEGRAPH OF VENEZUELA,
From Caracas to La Guayra, May 9, 1876.
 (5 hours, 25 minutes.)

Gen. J. J. YEPPEZ:

Those gentlemen should not have taken passage to Curaçao when their passports were for the United States of America, but I have reason to confide in them, thus I expect you will put them in liberty, stating to them that you are sorry for what has happened. The steamer has my permission to leave as soon as those gentlemen are on board.

GUZMAN BLANCO.

In view of the foregoing, and regarding the compensation to be given in this case as limited to reparation for the personal inconvenience and discomfort suffered by the claimant during his brief detention, and award will be made in the sum of \$250 United States gold.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of The United States of America on behalf of Charles W. Torrey, claimant, against the Republic of Venezuela, No. 24, the sum of two hundred and fifty dollars (\$250) in United States gold is

hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTÁRIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered August 25, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George E. Gage, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 25.
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BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of George E. Gage for damages for false arrest and imprisonment and unlawful detention and personal indignities connected therewith.

The claimant is a native-born American citizen. His complaint relates to his arrest at La Guayra December 26, 1900. The evidence submitted in the sworn statements of Messrs. Gage and Bartlett and the accompanying affidavits shows this arrest to have been entirely without justification, and although the prisoner was soon released he was treated while in confinement with great indignity.

The claim is for damages for the personal injuries, and also for resulting pecuniary loss, in the loss of an option for the purchase of some copper mines, which option he was unable to avail himself of by reason of his being unable to take the steamer which he had intended to take from La Guayra.

The claim was submitted diplomatically to the Government of Venezuela early in January, 1901. The position taken by the Venezuelan authorities was that Gage was in a deplorable state of drunkenness, warranting the arrest. This position of the Government of Venezuela is supported by the sworn affidavits of several gentlemen to the effect that Messrs. Gage and Bartlett were unduly ridiculing a Venezuelan gentleman on the train from Caracas to La Guayra.

These contentions on the part of the Venezuelan Government are fully met by the answering affidavits of Mr. Gage, and also by the papers submitted as part of the original claim, especially the direct statement of Philip Scott, who was the conductor on the train at the time, that these two gentlemen were not in any way disorderly.

There is also in the case an official communication of Mr. Loomis, of date February 10, 1901, that Mr. Gage was visited by the United States consul at La Guayra at 7 o'clock the evening of his arrest—the arrest having been made at 3 o'clock—and that there was nothing about him to indicate that he was intoxicated or intemperate in the use of intoxicating liquors.

In this apparent conflict of testimony there is, however, one circumstance that is controlling, and that is that these two gentlemen, Gage and his companion Bartlett, were immediately released by the Venezuelan authorities without having been brought to trial. This is a concession, made at the time, by the Venezuelan Government that it had no right to arrest them, and this concession, made at the time, must outweigh all expressions of opinion made at some interval of time thereafter of persons on the train, to the effect that these two gentlemen were disorderly or intoxicated.

The most that can be said in the case in favor of the Venezuelan Government would be that its officers allowed themselves to commit an unlawful act upon the unwarranted complaint of some gentleman on the train whose feelings were perhaps unintentionally touched by these two American gentlemen. The statements of the conductor in charge of the train that these gentlemen were not disorderly, coupled with the fact we have already referred to of their immediate release, amounts to proof conclusive that the arrest was unjustified.

In any event, even if there had been an excuse for the arrest, there is no excuse for the indignities which the record shows these gentlemen were subjected to during the term of their imprisonment, however short. For such indignities there is liability separate and distinct from that of the false arrest. In this case the claimant is entitled to recover upon both grounds.

There can be no question from a legal standpoint of the liability of the Republic of Venezuela to respond in damages upon the facts in this case. See the cases of this character which have arisen before similar commissions, collated by Mr. Moore in his work on International Arbitrations, volume 4, page 3235 et seq.

In the cases here collated, there has universally been held to be a liability for an arrest and imprisonment without cause, for undue detention even where the arrest was based upon probable cause, for harsh and arbitrary treatment during imprisonment whether the arrest was warranted or not.

Applying these principles, as to which there can be no question, to the facts of this case, we submit an award should be made for the claimant.

The memorial originally presented to the United States was in favor of both Messrs. Gage and Bartlett. The claim is presented to the Commission on the amended memorial of Mr. Gage alone, of date of May 18, 1903—Mr. Bartlett, by letter of similar date, having withdrawn his claim, for the reasons therein stated.

The amounts claimed are consequently the amounts specified by Mr. Gage in his amended memorial of May 18, 1903. These amounts we submit are reasonable and just and an award should be made in their aggregate amount.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

George E. Gage, Claim No. 25.

Honorable members of the Venezuelan-American Mixed Commission.

The undersigned agent of the Government of the United States of Venezuela has studied the claim presented by the American citizen George E. Gage, and respectfully states to the tribunal:

The present claim is one of the most unjust which could be presented to the consideration of this honorable Commission.

The claimant was traveling in company with a friend and fellow-countryman in the train from Caracas to La Guaira. Both moved by an inspiration, the cause of which is needless to state, began to ridicule one of the most respected members of this society. The indignation which such an act, so contrary to the most elemental duties of courtesy and mutual respect between educated persons, caused among the passengers induced them to call the attention of an inferior police employee, who was on board the train, to what was taking place. Said employee, at the termination of the trip and in fulfillment of his functions, put the individuals above referred to under arrest.

The preceding account is in entire conformity with the facts which occurred as is shown by a deposition of all the passengers, a certified copy of which was sent to the American legation in this city by the minister of foreign affairs. The undersigned submits this deposition in certified copy.

It is impossible to believe that persons enjoying common sense and having the social standing of the declarants would have been willing to distort the facts as set forth in their depositions for the sole pleasure of slandering a third party. No; such facts are clearly true.

The undersigned deems it unnecessary to discuss the question of whether the claimant and his companion had taken liquor. The facts being proved, the cause which produced them lacks importance in the determination of the case.

The claimant complains of illtreatment on the part of the police officers, of having been conducted to an unhealthy cell, and, finally, of having lost, on account of his arrest, the option of purchasing some copper mines—all of which he estimates in a disproportionate and enormous sum.

With regard to the first point there is no other proof than his own affirmation, too interested to constitute a decisive element; with regard to the second, it is undeniable that the detained persons were conducted to the only establishment of correction in La Guaira, and, touching the third point, it must be admitted that if the claimant suffered any real damage, he must blame himself for it.

The claimant does not state what the option was that he lost, with what parties he was in negotiation, nor to what mines he referred—data that are all of the first importance in order to establish counter proof. It is very convenient and easy to thus claim the most illusory damages.

The argument that has been made that the persons detained should have been prosecuted lacks weight. The local police ordinances do not provide summary trial for the imposition of correctional punishments.

It appears from the proofs that the claimant committed a fault, that the police authorities proceeded in strict compliance with their duties,

and that the damages alleged have not been established by any proof. The claim ought therefore to be disallowed.

A moral consideration which ought to strongly influence the mind of the tribunal in disposing of this case is the withdrawal of the Bartlett claim. Such an act represents, no doubt, the spontaneous reparation of an honorable conscience which recognizes its error and tries to remedy it.

Before a tribunal of equity, such as the present, the considerations which arise from such an act must be conclusive.

Caracas, July 13, 1903.

F. AORROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George E. Gage, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 25.
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BAINBRIDGE, *Commissioner*.

This claim arises out of the arrest of the claimant, Gage, and one Fred R. Bartlett, citizens of the United States at Le Guaira, on the evening of December 26, 1900.

The arrest was made by the mayor of La Guaira, who had been a fellow-passenger of the parties named on the afternoon train from Caracas, on the ground that the conduct of Messrs. Gage and Bartlett during the trip had been prejudicial to good order, as tending to cause a disturbance of the peace. The testimony as to whether the arrest was warranted or not is conflicting, although it must be said the weight of the evidence is to the effect that the conduct of these men was lacking in discretion. It is not deemed necessary, however, to discuss the evidence upon this point in detail. The claim turns primarily upon the occurrences subsequent to the arrest.

The complaint sworn to by both Gage and Bartlett on December 29, 1900, states:

Arriving at the jail we were placed in a small, dirty, dingy room with eight or ten prisoners and with no accommodations of any kind. Our money and valuables were taken from us as we were registered and searched. Shortly after one of the prisoners offered us a bench and we sat down and conversed quietly together, and addressed no remarks to any one. After having been seated for about fifteen minutes the chief of the prison guard entered the room and roughly ordered us off the bench, and taking the bench in his hands raised it over Mr. Gage's head and threatened to kill him if he made the slightest protest, abused us, and then left the room. While we were in the prison we asked permission of the chief of the guard and his aids to communicate by telephone with the American consul in La Guaira or the American minister at Caracas. This request was absolutely refused, and we were told that the American consul had been at the jail, but why we did not see him was not explained.

They were released without any trial about half past 7 that evening, their money and valuables being returned to them. Their imprisonment lasted about two and one half hours.

The citizen or subject of a state who goes to a foreign country is, during his stay in the latter, subject to its laws and amenable to its courts of justice for any crime or offense he may commit in contravention of the municipal laws; nor can the Government to which he owes allegiance and which owes him protection properly interpose

unless justice is denied him or unreasonably delayed. This principle, however, does not interfere with the right and duty of a state to protect its citizens when abroad from wrongs and injuries, from arbitrary acts of oppression or deprivation of property, as contradistinguished from penalties and punishments incurred by the infraction of the laws of the countries within whose jurisdiction the sufferers have placed themselves.

It would seem too clear for argument that the denial to a foreigner, arrested for an alleged infraction of the municipal law, of the opportunity to communicate with the representatives of his Government is an arbitrary act of oppression, amounting, in itself, to a denial of justice. While amenable to the municipal law, the accused is entitled to a speedy and impartial trial under every civilized code, and to such assistance in securing a prompt and impartial trial or in other ways as it may be within the province of the representatives of his Government to render.

The responsibility of a government for the acts of its administrative officials, injuriously affecting the rights of aliens, is beyond question.

Presumably acts done by them [says Hall] are acts sanctioned by the State, and until such acts are disavowed, and until, if they are of sufficient importance, their authors are punished, the State may fairly be supposed to have identified itself with them.

The conduct of the jefe civil and the police officers at La Guayra in connection with the arrest and detention of Mr. Gage was promptly brought to the attention of the Venezuelan Government by the Government of the United States through its legation at Caracas, and such apology and reparation required as were deemed justified under the rules of international law herein stated. So far as the evidence shows, however, the acts of the civil authorities were not disavowed, nor were their authors punished.

For these reasons I am of opinion that an award should be made in this claim.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of George E. Gage, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 25.
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Doctor PAUL, *Commissioner*.

I regret to disagree with the opinion of the honorable Commissioner of the United States in this case.

The evidence presented is in itself sufficient to prove that George E. Gage misdemeaned himself during his trip from this city to the port of La Guayra, and that he well deserved the punishment inflicted on him upon his arrival at La Guayra by the civil authority who was a witness to Gage's doings.

Said punishment, which was only an arrest of two and one-half hours, is sanctioned by law, and it is within the power of civil authorities to administer such in a summary way, without previous formal trial, in cases of disorderly behavior in public places or in cases of misdemeanor against other persons. This last was the case of Gage, which happened to be witnessed by the authority. The ill treatment

and incommunication with his minister or consul of which he complains he was a victim during his arrest only appears from the statement of the claimant, whose truthfulness in the present case is doubtful, considering that in the memorial presented by him he goes as far as to distort Dr. N. Zuloaga's declaration, who, according to Gage, said "in case of an international claim, he would side with his Government regardless of truth." The deposition of Elias de Leon, who was present as interpreter, at the interview between Doctor Zuloaga and Gage, states the contrary, and he assures that Doctor Zuloaga said: "This matter is not worth raising an international question, but if it comes to this, I am a Venezuelan in the first place, and I will be at the side of my Government and will accomplish my duty."

There is a very substantial difference between fulfilling one's duty and being regardless of truth, a difference which the claimant does away with, with a deliberate purpose of diminishing the weight of the declaration of a person who is perfectly truthful by temperament as well as by education and who had been the gratuitous victim of Gage's sneers and misbehavior which caused him to be arrested.

I am of opinion that the claim of George E. Gage must be disallowed.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of George E. Gage, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 25.
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The UMPIRE:

A difference of opinion having arisen between the Commissioners of the United States of North America and the United States of Venezuela, this case was duly referred to the umpire.

The umpire, having fully taken into consideration the protocol and also the documents, evidence, and arguments, and likewise all the communications made by the two parties, and having impartially and carefully examined the same, has arrived at the decision embodied in the present award:

Whereas the claimant claims for damages for false arrest and imprisonment, unlawful detention, and personal indignities connected therewith; and

Whereas it appears from the declaration of the witnesses, General Garcia, civil chief of the parish of La Guayra, Dr. N. Zuloaga, Dr. A. M. Diaz, Dr. F. Hernandez Tovar, and E. Ochoa, that the claimant, in a first-class carriage of the Caracas and La Guayra Railway, in which he traveled together with the witnesses, behaved in a way as if he were intoxicated and indulged in actions that were liable to disturb the public peace, which declarations do not seem to be sufficiently contradicted by the declaration of the conductor of the railway, who only from time to time walked through the carriages, and was not, as the other witnesses were, in his constant society, nor by the declaration of the consul of the United States of North America at La Guayra, who only saw him two and one-half hours later; and whereas, therefore, the act of the police officer who ordered claimant to be arrested

and put into jail for disturbing public order can not be said to be unlawful, the charge of false arrest and imprisonment can not be admitted.

Whereas, furthermore, the prisoner was let free after about two and a half hours of detention; and

Whereas in case of a detention by the police in behalf of public safety of a person who in a state of intoxication has disturbed and may be feared furthermore to disturb the public peace, a detention of little more than two hours can not be said to be excessively long, the charge of unlawful detention seems, in case of lawful arrest, not to be founded; and

Whereas the claimant further complains that his request to communicate with the American consul at La Guayra or the American minister at Caracas was refused;

Whereas, however, for this refusal there is only the statement of claimant and his former conclaimant, Mr. Bartlett, whilst out of the letter of the minister of foreign affairs of the United States of Venezuela to the minister of North America of April 2, 1901, it might be concluded that instead of a formal refusal there might have been only a delay commanded by circumstances, and whilst, on the other hand, it is proved that claimant was let free, after about two hours of detention, in consequence of—or in every case posterior to—communications between the Venezuelan authorities and the North American consul at La Guayra and the North American minister at Caracas, the fact of absolute refusal seems doubtfully proved. The rule “*in dubiis pro reo*” must be here applied in favor of the authorities charged with the unjust refusal.

As to the complaint that the claimant was placed in a small, dirty, dingy, stinking room, this is met by the declaration on behalf of the Venezuelan authorities that he was conducted to the only establishment of correction in La Guayra, whereas it has to be kept in mind that this kind of establishments will almost nowhere seem comfortable for persons of claimant's social position.

As regards the further ill-treatment claimant complains of:

Whereas for this likewise the only evidence is the statement of the claimant and his former conclaimant, Mr. Bartlett; but

Whereas it has to be considered that, from the nature of the facts, as to the treatment of prisoners by their gaoler (jailer) it will always be difficult to find other witnesses besides the prisoners themselves, and whereas it has further to be considered that not only the Venezuelan authorities did not deny the facts, but that there is no trace of these authorities investigating the facts and thus trying to undo the charge that was brought up against them; and

Whereas this Commission has to investigate and decide the claims that are brought before it only upon such evidence and information as shall be furnished by or on behalf of the respective governments:

It seems that the sworn-to declaration of the claimant and Mr. Bartlett, as presented in their behalf by the United States Government, not contradicted or debilitated by any other evidence or by any intrinsic defect, can not be set aside; and

Whereas the ill-treatment by the officials for which the Government is liable, and on which the claim is founded, exists in insults and in menaces that were not carried out, a sum of \$100 seems a just reward, which sum is hereby allowed to the claimant.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

AWARD.

In re the claim of the United States of America, on behalf of George E. Gage, claimant, against the Republic of Venezuela, No. 25, the sum of one hundred dollars (\$100) United States gold is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America, in accordance with the provisions of the convention under which this award is made.

HARRY BARGE, *Umpire*.

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered September 15, 1903.

Before the Mixed Commission organized under the protocol of
February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of William B. Matchett, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 26.
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BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of William B. Matchett for the sum of \$100,900 for services rendered as attorney and counsel to the Government of the Republic of Venezuela.

I.

STATEMENT OF THE CASE.

The claimant is a native-born citizen of the United States, residing in the city of Washington and doing business there as an attorney at law. He was employed to render legal services to the Government of the Republic of Venezuela between the years 1873 and 1890, under the following circumstances and of the following character: In 1868 a commission sat at Caracas, Venezuela, for the purpose of adjudicating the claims of citizens of the United States against the Republic of Venezuela, and made awards to various persons, aggregating about a million and a quarter of dollars, upon which the Republic of Venezuela began making payments.

Subsequently, about 1873, the Republic of Venezuela became convinced that the awards so granted were fraudulent, and immediately began negotiations with the Government of the United States for a rehearing of the claims which had been passed upon by such Commission.

The claimant, Mr. Matchett, was employed by the officers of the Venezuelan Government to present this matter before Congress, committees of Congress, and to the State Department of the Government of the United States; and did so present it, as appears in detail in his memorial and accompanying papers, from 1873 on, securing finally the convention of 1885, by which a new commission was appointed to review and revise the work of the former commission of 1868. He subsequently, and up to and until the time that the reviewing commission was appointed and determined its labors, continued to act in the matter for the Venezuelan Government as special counsel.

He makes a claim for compensation in the sum of \$100,900, upon the basis, first, that such was the reasonable value of the services, with interest from the time they were rendered, and, secondly, that the agreement so made with the officers of the Venezuelan Government was that such should be the basis of his charge.

II.

The facts set forth in the memorial and accompanying documents sufficiently support the claim.

It does not appear that at the time of the original appointment of Mr. Matchett any specific agreement was made as to his compensation; but there is and can be no question as to his employment. The documentary matter attached to the memorial clearly shows the appointment, and, moreover, the Venezuelan Government, by entering into the new convention and taking advantage of Mr. Matchett's services, has recognized and ratified the acts of its agents in employing Mr. Matchett for that purpose, even if his employment had not been originally made by Government authority.

Subsequently an agreement was made by these agents with the claimant fixing his compensation as here asked for; and it can not make much difference in this case whether the claim is rested upon the express agreement of the agents of the Venezuelan Government fixing the basis of the compensation, or whether the amount to be awarded Mr. Matchett is determined solely with reference to the value of the services rendered. There could, we think, be no question but that the agents who employed him, and whose acts in reemploying him were ratified by the Government, would also have authority to fix the basis of his compensation, and that must also be regarded as having been ratified by the Government of the Republic of Venezuela. The Republic of Venezuela could not accept the benefits of Mr. Matchett's services and ratify in that way his employment, without also ratifying the agreement which has been made for his compensation.

Moreover, and in any event, the mere acceptance of the services, as was so plainly done in this case, is sufficient to lay a basis for a claim for compensation. Having accepted the benefit of the services, the Republic of Venezuela is bound to pay either the sum agreed upon or certainly a fair and reasonable compensation therefor.

The facts as to the nature and extent of the service clearly show, on the one hand, an agreement with the officers of the Venezuelan Government for the agreed compensation which is asked for, and on the other hand, that these services were of such a nature and of such importance that the amount claimed can not be regarded as anything but a low and reasonable compensation for the services rendered.

III.

The present Commission has full and ample power to hear and adjudicate this claim.

The dismissal of this claim by the commission appointed under the convention of 1885, which met in 1890, was for want of jurisdiction only, and upon the ground that the claim arose under a contract entered into subsequent to the meeting of the commission of 1867 to 1868, and that the powers of the commission which met in 1890 were limited to a review of the cases which had been before such former commission. The dismissal was expressly for want of jurisdiction, and without prejudice to the prosecution of the claim elsewhere.

The contention of the Venezuelan authorities, that, in dismissing for want of jurisdiction, the commission must necessarily have determined the merits of the claim, or that the dismissal without prejudice to the prosecution of the claim elsewhere meant elsewhere than as against Venezuela, are propositions too manifestly absurd and unreasonable to need discussion.

The principle is recognized by every code of municipal law, and also by international and public law, that in order to constitute a bar to the adjudication of any claim there must have been a decision upon the merits, and that a dismissal for want of jurisdiction, which means for want of power to determine the claim, necessarily means that the commission did not have the power to decide the merits of the case.

Power is, moreover, expressly given by the protocol under which this Commission has been appointed, to determine all claims owned by citizens of the United States. Upon this power there is no limitation or restriction whatsoever. If a claim exists in favor of a citizen of the United States, this Commission has, therefore, full and ample power to consider and determine it.

IV.

An award should be made in favor of the claimant for the full amount of \$100,900, with interest.

The claim being one for compensation for services actually rendered as attorney and counsel to the Republic of Venezuela in a matter of grave importance, and in which the services which were rendered were successful in obtaining for the Republic of Venezuela the relief sought, an award should be made for the full amount prayed for, whether it be based upon the agreement to pay that amount or solely upon the obligation to pay a just and reasonable compensation.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

WILLIAM B. MATCHETT }
 v. } Claim No. 26.
 VENEZUELA. }

ANSWER.

To the Honorable Members of the Mixed Venezuelan-American Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied the claim presented by William B. Matchett, an American citizen, and respectfully shows to the Commission:

The claimant is a lawyer and according to his affirmation his debt against Venezuela grew out of professional services rendered to the representatives of that country in Washington in obtaining from the American Congress the revocation of the findings of the mixed claims commission of 1867-68.

The claimant has for a long time been claiming to have tendered to Venezuela such services on the occasion referred to, and has already made a charge against the nation of \$1,000, which was paid to him.

When Mr. Pile was the representative of Venezuela in the United States, it appears that he agreed with the claimant to pay to him a certain sum if, through his influence, he should aid in obtaining the desired revision. Such revision was decided upon the 3d of March, 1883, no doubt because the justice and honor of the United States demanded it from the moment in which the investigations made in the House of Representatives made the existence of fraud clear beyond discussion. If Mr. Matchett believes that such a result was due to him, it is his place, at least, to prove it, which he has not done.

It was presented to the last commission of 1890 with a badly drawn-up plea, but in which he affirmed that he was the owner of certain certificates of the former commission and he asked that they be guaranteed to him by giving him new ones for them, according as Venezuela had, in his belief, agreed on account of services received from him. It seemed to the commissioners a very strange idea that that Republic should have agreed to preserve the value of certificates whose nullity was claimed and which was the result of steps recommended by the claimant, according to his affirmation. This proof he did not produce, nor could he produce the absurd agreement he invoked, and which never existed except in the imagination of the claimant.

The Venezuelan lawyer opposed consideration of the claim on the ground that it had not originated prior to the 1st of August, 1868, a limitation set forth in the second article of the treaty of 1885. For these reasons the commission declared its incompetence and rejected the claim, but without prejudice to the right of its presentation before some other authority.

As may be seen from the papers submitted by the claimant, the latter does not prove the obligation which he attributes to Venezuela concerning him. The debt, even in the event—which is denied—that it existed, should be barred on account of the lapse of more than thirty years.

The inadmissibility of the claim should be declared.

Caracas, July 13, 1903.

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of William B. Matchett, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 26.
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DECISION.

By the Commission.
The Commission disallows the claim.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

DECISION.

In re the claim of The United States of America on behalf of William B. Matchett against the Republic of Venezuela, No. 26, the undersigned Commissioners, having carefully and impartially examined the evidence presented in support of said claim, and having reached the conclusion that said claim is insufficient to establish any liability on the part of the Government of Venezuela to the claimant, hereby agree and adjudge that said claim be in its entirety disallowed.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

RUDOLPH DOLGE,
Secretary on the part of the United States of America.

J. PADRÓN UZTARIZ,
Secretary on the part of Venezuela.

Delivered September 4, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Lorenzo Mercado, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 27.
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BRIEF ON BEHALF OF THE UNITED STATES.

I.

STATEMENT OF FACT.

The United States in this case presents a claim for damages arising out of injuries to the person and property of the claimant Lorenzo

Mercado. The amount of damages here claimed is \$60,000 for the arrest and false imprisonment of the claimant for the space of nearly a year, and \$100,000 for the destruction of claimant's business and the loss of his property during the time he was in prison.

The claimant, Lorenzo Mercado, is a native of Ponce, island of Porto Rico. The treaty of peace with Spain, by which Porto Rico was ceded to the United States, provided that an act of Congress should determine the status of the inhabitants of the island of Porto Rico with respect to their allegiance. On April 12, 1900, Congress passed a law relative to this matter, section 7 of which reads as follows:

SEC. 7. That all inhabitants continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the eleventh day of April, nineteen hundred, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the eleventh day of April, eighteen hundred and ninety-nine; and they, together with such citizens of the United States as may reside in Porto Rico, shall constitute a body politic under the name of The People of Porto Rico, with governmental powers as hereinafter conferred, and with power to sue and be sued as such.

In pursuance of this act of Congress the claimant received a passport from the governor of Porto Rico and is therefore entitled to the protection of the United States.

While residing temporarily in the Republic of Venezuela, and doing business there, the claimant was arrested and thrown into prison on November 4, 1901. He was held prisoner for about two weeks and was then set at liberty until the 6th of January, 1902, when he was again taken into custody, and, without any form of trial whatever, was held prisoner for the period of eleven and a half months, being released on the 17th of November, 1902. While the claimant was imprisoned the business which he was conducting was so interrupted that it became ruined. The claimant's house which was mortgaged for a small sum of money was sold at a great sacrifice and claimant's family compelled to vacate the premises. During the entire period of his confinement claimant was held incomunicado, was allowed no consultation either with his lawyers or friends, and while in prison contracted a disease which was at the time epidemic in the prison, and which has permanently injured his health; although he repeatedly asked leave to be taken to the hospital he was persistently refused.

II.

The evidence in this case clearly supports the allegations set forth in the memorial of the claimant.

There are annexed to the memorial various affidavits of creditable witnesses taken in due form before the consular agent of the United States at Caracas, setting forth in detail the facts upon which the claim is based. Among the witnesses we have the testimony of the physician who was called in to attend the claimant during his illness in the prison, and, what seems to be even stronger, we have the testimony of the warden of the prison himself, in which he states that he took claimant into custody and held him prisoner under superior orders, but in no way sets forth that claimant was tried by any court of jus-

tice and condemned in the proper manner to suffer imprisonment by the proper judicial authority. In the face of the evidence there can be no question raised as to the fact that claimant was arbitrarily held a prisoner for a long period and was, during the time of his incarceration, treated in a most brutal and harsh manner.

III.

The acts complained of by the claimant were the acts of the officials of the Venezuelan Government while such persons were acting in their official capacity and render the Venezuelan Government liable in damages to claimant.

There can be no question from a legal standpoint as to the liability of the Republic of Venezuela to respond in damages on account of the facts stated in this case. Claims for damages have frequently arisen under similar circumstances and governments have been held responsible for false imprisonment of citizens of another country. For a collection of cases of this character see Moore's International Arbitrations, volume 4, page 3235 et seq.

IV.

There can be no question as to the liability of the Government of Venezuela to reimburse claimant for the damages to his property during the period of his incarceration.

For the law in this case see Moore's International Arbitrations, fourth volume, 3235 et seq., where an award was given in favor of Captain Baldwin for injuries suffered during his imprisonment by Mexican authorities.

V.

Claimant is clearly entitled to an award by the Commission to the extent of the amounts claimed and which are substantiated by the evidence in the case, unless it could be shown that the claimant was not entitled to the protection of the United States.

The proposition that the claimant is entitled to the protection of the Government of the United States is clearly set forth in the law of Congress above cited. Claims of individuals under similar circumstances have frequently arisen before mixed commissions adjudicating claims of United States citizens. Several of these cases arose under the treaty with France at the time of the annexation of Louisiana in 1803; other cases under the treaty with Spain upon the annexation of Florida in 1809. Cases have arisen under the act of Congress by which Texas was annexed to the United States in 1845; also in the case of the annexation of California under the treaty of Guadalupe Hidalgo of 1848. (See Wheaton's Elements of International Law, 6th edition, p. 627, under the head of "Collective naturalization." See also vol. 2, Moore's International Arbitrations, p. 2509.)

An award should be made as prayed for by claimant.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

Claim of Lorenzo Mercado, No. 27.

ANSWER.

To the honorable members of the Mixed Venezuelan-American Commission:

The undersigned agent of the Government of the United States of Venezuelah has studied the claim presented by Mr. Lorenzo Mercado, a native of the city of Ponce, island of Porto Rico, and who is said to be an American citizen, and respectfully states to the tribunal:

The undersigned does not deem it necessary to enter into a critical analysis of the facts on which the claim is based, inasmuch as there is a preliminary point which first demands determination. It is the following:

The claimant is not an American citizen, and in the event, which is denied, that he should be an American citizen, he has lost his rights through having intimately associated himself in an active manner in the internal politics of the country.

Under the provisions of the law passed by Congress on the 12th of April, 1900, establishing the status of inhabitants of Porto Rico, it is provided—

That all inhabitants continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Porto Rico, and their children born subsequent thereto, shall be held to be citizens of the United States. * * *

From the depositions which the undersigned submits herewith in original it is shown that the claimant on the date of the issuance of the aforesaid law did not reside in Porto Rico, and such residence appears to be an essential condition imposed by the American legislators in order to acquire the status of a citizen of the United States. The honorable agent of that nation speaks of a passport issued to Mercado by the governor of Porto Rico, but, besides the fact that such a document can not be compared to a certificate of nationality, the date on which it was issued is not shown in the proceedings nor otherwise indicated, and it may very well have been after the events on which the claim is founded.

From the same deposition submitted herewith it is shown that Mercado exercised military duties in the Republic and that he has resided here since 1889.

The undersigned also submits an original letter from the claimant to the Chief Magistrate of the Republic in which his intervention in political internal matters is explicitly admitted by his signature of it.

On account of all that is set forth, the inadmissibility of the claim should be declared.

Caracas, July 13, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Lorenzo Mercado, claimant, v. THE REPUBLIC OF VENEZUELA.	}	Nos. 27 and 30.
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YOUR HONORS: I am just in receipt of a letter from the legation of the United States, in this city, stating that Mr. N. A. Paquet, the attorney in fact of Mr. Lorenzo Mercado, has withdrawn all claims which have been presented to this honorable Commission by the United States of America on behalf of Mr. Mercado, and instructing me to take formal action for their withdrawal. In consequence I hereby formally withdraw claims Nos. 27 and 30 from the further consideration of the Commission.

Very respectfully,

ROBERT C. MORRIS,
Agent of the United States.

CARACAS, VENEZUELA, *August 15, 1903.*

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Felipe Scandella, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 28.
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BRIEF ON BEHALF OF THE UNITED STATES.

I.

STATEMENT OF FACT.

The United States presents in this case the claim of Felipe Scandella, as charterer of the schooner *Harry Troop*, for \$8,000 for unlawful detention. The claimant is a native-born citizen of the United States engaged in the maritime transport business. He sailed from New York for Ciudad Bolivar on the 30th of April, 1902, and arrived at San Felix on the 1st day of June. Upon arrival at this port the schooner was boarded by three government officers, who informed the captain that he could not proceed to his destination until further orders from Gen. Julio Sarria Hurtado, the constitutional president of the State of Guayana. The captain of the schooner gave to these officers a bill of health. Several requests were made during the month of June to General Sarria that the vessel should be released in order to enable her to proceed to Ciudad Bolivar. On the 1st day of July General Sarria issued a written order refusing to allow the vessel to continue to her port of destination. After a three months' detention at San Felix Mr. Scandella was allowed to continue to Ciudad Bolivar

in a canoe with the pilot of his schooner, by virtue of a special passport issued by the order of the military chief.

At the time of the detention of the schooner there was no blockade of the Orinoco River, but twenty-eight days after a decree was issued creating a blockade of the river. During his detention in San Felix Mr. Scandella was taken ill with fever, which he contracted at said port, and his health has been wrecked in consequence. The total time of his detention was three months at the port of San Felix and subsequently seventy-eight days at Ciudad Bolivar.

II.

The Venezuelan Government is liable in this case for the unlawful detention of this vessel and the damages consequent thereon.

The seizure of this vessel was without warrant, and the only probable cause which could be assigned was that the revolutionary party was in possession of the port for which the vessel was bound. The blockade, however, was not established by the Government until twenty-eight days after the order detaining the vessel, and the right to relief in such a case is clearly established by the principles of international law. (See the case of the *Franklin*, reported in fourth Moore's International Arbitrations, at page 3783.) In this case the American ship *Franklin* sailed from Boston for California laden with a valuable cargo. She was detained in upper California by order of the Mexican general commanding at San Diego. There were no judicial proceedings, and after a long detention the master of the vessel, finding that it was the intention of the general to get possession of both the ship and cargo, ran away with his vessel to the Hawaiian Islands. An award of over \$100,000 was made by the umpire in this case.

Also see the case of the *Labuan*, in the fourth volume of Moore's International Arbitrations, at page 3791. This was a case where the British steamship *Labuan* was in the port of New York laden with a cargo of merchandise destined for Matamoras. Upon the 5th of November, 1862, her master presented the manifest to the proper officer of the custom-house at New York for clearance, but such clearance was refused and such refusal continued until the 13th of December following. In the memorial in this case it was claimed that the detention arose from instructions received by the custom-house officers from the proper authorities of the United States, the object being to detain vessels destined for ports in the Gulf of Mexico, and thus prevent the transmission of information regarding a military expedition fitted out by the authorities of the United States. The damages claimed were for \$38,000, and the Commission unanimously made an award in favor of claimant for \$37,392.

See also the case of the *Tubal Cain*, fourth volume of Moore's International Arbitrations, page 3793. This was the case of a British steamship chartered at New York for a voyage to Matamoras and back to New York. On April 8, 1863, when she was ready to sail, she was held by United States authorities at the port of New York on the ground that she was undertaking an illicit voyage to the blockaded ports of Texas; that she was carrying contraband of war, and that she had on board passengers, one of whom was an agent of the Confederate Government, engaged in contraband trade with the enemy. On

May 26, following, the War Department made a report inculcating two of the passengers but exculpating the owner and charterer of the vessel. The Department also held that there was probable cause for the previous detention, but recommended that the vessel be discharged. It was not, however, surrendered until July 16. The Commission unanimously awarded \$4,800 for her detention.

III.

An award should be made in this case for the full amount of the claim.

The claims for damages in this case are for injuries through the personal detention of the claimant and total loss of time and business, as well as necessary expenses to which he was put on account of his illness, which was brought on by being detained at the port of San Felix. We think that it is clear this is a more than moderate demand. The action of the Venezuelan Government was wholly unwarranted, and an award should be made for the full amount claimed.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

FELIPE SCANDELLA	} No. 28.
v.	
ENEZUELA.	

ANSWER.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the United States of Venezuela, has studied the claim presented by the American citizen, Felipe Scandella, and respectfully shows to the tribunal:

I.

The claim arises out of the detention, certified to by the order of the President of the State of Bolivar, of a vessel—of which the claimant was charterer—which, destined and carrying cargo for Ciudad Bolivar, had left New York on the 30th of April, 1902.

II.

It appears from the confession of the claimant himself that, at the time of the arrival of the vessel at the port of San Felix, Ciudad Bolivar had been occupied by forces rebelling against the constitutional Government. The bark being destined for this last point, it was necessary for the preservation of public order, which was not lost sight of in the judgment of the court, to decree its detention. The means adopted by the Government are in strict accord with the principles of international law, and are justified by the interests of the State, which must always be given preference over private interests.

Said measure is what is called in public law "a sovereign decree."

In cases of civil commotions or foreign war the interest of its defense or its security may place the State under the moral obligation of momentarily preventing the freedom of commercial business, of paralyzing the maritime and mercantile movement and even of making use of the vessels for the transport of troops and armament or other military operations. The interest of the State, in this case, is above private interest, national or foreign, and legitimizes such a mode of action. (Calvo, International Public and Private Law, paragraph 105.)

III.

For the considerations above stated the claim should be disallowed.

F. ARROYO PAREJO.

CARACAS, *July 16, 1903.*

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Felipe Scandell, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 28.
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DECISION.

Opinion by Doctor PAÚL.

The Commission disallows the claims.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Felipe Scandella, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 28.
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Doctor PAÚL, *Commissioner*;

This claim is based on the fact of the detention of the bark *Harry Troop* on her arrival at the port of San Felix on her way to Ciudad Bolívar, by order of General Julio Sarria Hurtado, constitutional president of the State of Bolívar. General Sarria's reason for detaining the vessel was that the city of Bolívar was occupied by revolutionary forces.

The claimant, who appears to be the vessel's freighter, claims from the Government of Venezuela the payment of \$8,000 for damages caused to his business and for having his health impaired, through the detention for three months at the unhealthy port of San Felix, and the delay for seventy-eight days in Ciudad Bolívar, as only after that time the English man-of-war *Phantom* could convoy the bark *Harry Troop* out to sea.

Neither the memorial nor the evidence show that the claimant has sustained any damages as freighter of said vessel, nor does he claim any indemnity for damages he might have to be responsible for to the owner of the vessel for the delay. He only claims:

1. Losses sustained by not having been able to ship on the <i>Harry Troop</i> at Ciudad Bolivar the engaged cargo, because the commander of the <i>Phantom</i> did not wish to wait for the cargo to be put on board.....	\$4, 600
2. Damages for five and a half months, personal detention, and consequent loss of time and business	3, 300
3. For physician's fees and medicines.....	100
	<hr/> 8, 000

From the examination of the three items it appears that the first is undoubtedly unjustified, not being possible to make the Government of Venezuela responsible for the inconveniences met by Scandella at Ciudad Bolivar in loading the *Harry Troop*, that city being occupied by the insurgents, and being also the principal cause of Scandella's failure to put the freight on board the said vessel, the resolution of the commander of the *Phantom* not to wait for the loading.

The second item is also inadmissible, not having been proven, or even alleged, that the detention ordered by General Sarria referred to the person of Scandella. That officer detained the *Harry Troop* for reasons judged of moment, on account of the revolutionary occupation of Ciudad Bolivar.

In case there should exist any responsibility on the part of the Government of Venezuela for said detention, it would be for reason of the ship's delay, and in such case that responsibility could not be for more than an equitable indemnity for the actual delay of the *Harry Troop*, and as Scandella, as freighter, does not present any claim for said delay, for reasons known to himself, and as Messrs. Thorbourn & Co., English subjects and owners of the vessel, have presented a claim to the Anglo-Venezuelan Mixed Claims Commission, there only remains the mere personal detention of the claimant, Scandella, at the port of San Felix.

It is not proven that Scandella was forbidden to go to Ciudad Bolivar, the place of his residence, during the three months stay on board the *Harry Troop* as a passenger, he not being the captain nor part of the crew of the ship. He could have found means to go to Ciudad Bolivar during the period of three months, even in a rowboat, as it appears he did in the end, according to his own statement. The troubles he naturally had to have upon his arrival at Ciudad Bolivar on account of the detention of the vessel in which he was a passenger is an incident for which the Government of Venezuela could not be made responsible, not having been the cause of said troubles in a direct and special way to Scandella personally, but were the consequences of the suspension of regular communication with a town that had assumed a revolutionary and hostile attitude.

General Sarria gave no orders to prevent Scandella from continuing his journey, and he could have effected it either by the river or overland. The same judgment could be applied to the expenses Scandella affirms to have incurred for physician's fees and medicines to regain his health, impaired by the unhealthy climate of San Felix.

For the above stated reasons it is my opinion that this claim must be disallowed.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

DECISION.

THE UNITED STATES OF AMERICA ON BEHALF of Felipe Scandella, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 28.
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The above entitled case is hereby disallowed.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAUL,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BOUGE, *President.*

Attest:

RUDOLF DOLGE,
Secretary on the part of the United States of America.

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

Delivered September 11, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of William H. Phelps, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 29.
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The memorial in this case was prepared by the claimant, under the direction of the agent of the United States, and submitted to the Commission with an oral argument in support thereof. The claim was admitted in principle and the Commission made an award, as appears by its decision hereto annexed.

[Translation.]

WILLIAM H. PHELPS v. VENEZUELA.	}	Claim No. 29.
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ANSWER.

Honorable members of the Venezuelan-American Mixed Commission.

The undersigned agent of the Government of Venezuela has studied the claim presented by the American citizen William H. Phelps, arising out of the loss of three mules, which were his property, taken by forces of the Government under command of Gen. Calixto Escalante in the month of April, 1902, and respectfully shows to the tribunal:

I.

As the claimant exhibits a proof signed by the chief of the Government forces, the undersigned, in his representative capacity, accepts in principle the claim, and leaves its amount to be equitably fixed by the tribunal.

Caracas, July 16, 1903.

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of William H. Phelps, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 29.
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AWARD.

By the COMMISSION:

The Commission awards in favor of the claimant the sum of \$315.25 United States gold.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of William H. Phelps, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 29.
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The COMMISSION:

William H. Phelps claims the value of a saddle mule and two work mules which Gen. Calixto Escalante, commander of the Government troops, took from the claimant on the 20th day of April, 1902, in the city of San Antonio de Maturin, for the necessities of the military operations.

The value of these animals, as established by the petitioner, amounts to \$400 (United States gold), viz, \$200 for the saddle mule, and \$100 each for the work mules.

The honorable agent of the Government of Venezuela, in his answer, accepts the justice of the claim in principle, but, as the valuation of the animals was not fixed by agreement between the owner and General Escalante, leaves to the Commission the duty of establishing an equitable amount.

The Commission, therefore, makes an award in favor of William H. Phelps for the sum of \$300, with interest from the 20th of April, 1902, to the 31st of December, 1903, being the anticipated date of the final award by this Commission, at the rate of 3 per cent per annum, making in all the sum of \$315.25 United States gold.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of William H. Phelps, claimant, against the Republic of Venezuela, No. 29, the sum of three hundred fifteen and 25/100 dollars (\$315.25) in United States gold coin is hereby awarded in favor of the claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the Convention under which this award is made.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to award

HARRY BARGE, *President.*

Attest:

RUDOLF DOLGE,
Secretary on the part of the United States of America.

J. PADRON UZTÁRIZ,
Secretary on the part of Venezuela.

Delivered August 1, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Joseph Anderson, jr., claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 30.
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BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of Joseph Anderson, jr., to recover against the Government of Venezuela the principal sum of 14,000 pesos and the sum of 23,520 pesos, as interest, or a full amount of 37,520 pesos on five bonds issued by the Republic of Venezuela bearing date the 21st day of December, 1846.

I.

STATEMENT OF FACTS.

The claimant, Mr. Anderson, is a natural-born citizen of the United States, resident in Porto Rico, where he is engaged in the practice of law. He is the holder of the above-mentioned bonds by virtue of a special power of attorney and bill of sale given to him for a valuable consideration, by Fernando Hernandez y Miguens, who acquired his interest and right to the said bonds from his grandparents on his father's side, Domingo Hernandez and Maria Simana Garcia, who were residents of Venezuela and owned real estate there at the time of

the issuance of said bonds. Domingo Hernandez was a Spanish subject who was obliged to emigrate from Venezuela at the time of the war for independence. The bonds were issued in payment of certain properties belonging to his wife, Maria Simana Garcia, which were confiscated by the Government. Upon their removal from Venezuela, the grandparents of Fernando Hernandez y Miguens settled in Porto Rico, where they died, and the bonds upon which payment is claimed fell to their grandson.

II.

The claimant is not precluded from asserting his claim either by the convention which created the commission of 1867-68 or by the convention which established the rehearing commission of 1890.

The commission of 1867-68 did not have jurisdiction or power to hear and determine this case, for at that time the holders of the bonds were Spanish subjects. Neither could the claim have been brought before the commission of 1890, inasmuch as that was simply a commission for the rehearing of claims which were proper to be brought before the commission of 1867-68.

III.

The present Commission has full power to hear and determine this case.

The claim is now owned by a citizen of the United States and the protocol provides that—

All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments * * * shall be examined and decided by a Mixed Commission which shall sit at Caracas * * *.

Upon this power there is no limitation or restriction whatsoever. If a claim exists in favor of a citizen of the United States this Commission has the power to consider and determine it, and hence, necessarily, to consider and determine whether there is or is not a valid claim.

These bonds have no date of maturity, consequently it can not be contended that they should have been presented at some earlier time to the Republic of Venezuela. There is a default in the interest and the bonds constitute, as to their face and interest, a conceded obligation on the part of the Republic of Venezuela.

IV.

There can be no objection to the jurisdiction of this Commission because the claim is based upon bonds issued by the Republic of Venezuela.

It was at one time contended before some of the early arbitration commissions that bonds or other similar obligations issued by a government were not proper matters of international intervention nor claims proper to be considered by such arbitration commission, but the rule regarding all such questions has been since clearly settled to the

contrary, especially since the celebrated circular issued by Lord Palmerston, in 1848, to the British representatives at foreign courts defining the limits of intervention to include all claims for moneys due English subjects.

Any doubt upon this subject, so far as concerns the claim in this case and the powers of the present Commission, is moreover removed by the express language of the protocol above quoted.

V.

An award should be made in favor of the claimant for the full amount claimed, with interest.

The claimant in this case being an American citizen is not precluded by any bar whatsoever to the claim asserted and should receive an award in his favor for the amount of the bonds owned by him, with interest from the date of issuance by the Venezuelan Government.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

JOSEPH ANDERSON	}	Claim No. 30.
v.		
VENEZUELA.		

Honorable Members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the United States of Venezuela, has studied the claim presented by the American citizen, Joseph Anderson, jr., for the value of five bonds issued by the Republic of Venezuela in the year 1846, and respectfully informs the tribunal:

I.

The present claim can not be considered by this honorable Commission. In accordance with the terms of the protocol signed at Washington by the representatives of both Governments, only the claims owned by American citizens will be examined and decided by the Mixed Commission which the said convention establishes. Now, then, at the date of said convention the claim in question did not belong to Mr. Anderson, who had it assigned to him afterwards in order to realize on the speculation. It appears from the very documents put in evidence by the claimant that the assignment of the bonds is fictitious and made for the sole object of recovering on them.

The interpretation which the honorable agent of the United States endeavors to give to said article of the protocol would, on account of its broadness, be the surest means whereby citizens of the entire earth, Venezuelans included, could submit their claims to this Commission. It would suffice to accomplish this to assign them by virtue of a contract similar to that entered into between the claimant and Hernandez Niquens to any American lawyer.

Besides, the fact is evident that the claimant is not pursuing a right of his own, but is simply acting in the capacity of an attorney and it is not proved that his principal is an American citizen.

II.

Nor does the undersigned consider that claims, arising out of similar transactions to those which support the present one—that is to say, from bonds or other obligations issued by a State, can be submitted to this Commission.

In the majority of cases the holders of such obligations have acquired them voluntarily and spontaneously, with the object of realizing on them by way of speculation, and since they are ordinarily made payable to bearer, if their recovery could give rise to international action it would be a source of constant disturbance for the State that issued them.

III.

The honorable agent of the United States asserts that the question whether such obligations can be made the subject of international intervention has been settled in the affirmative, and he cites in support thereof the celebrated circular of Lord Palmerston to the British representatives, dated January, 1848. The question in fact is resolved by international law but not in the sense which the honorable American agent alleges. Here is what Lord Palmerston says in the document cited:

To intrust one's money to foreign governments is to carry on a speculation; to contribute to a loan negotiated by a foreign government; to buy in the exchange foreign obligations is a commercial transaction like any other; the risk which is inherent in all transactions of this sort is also inseparable from subscriptions to government loans. The creditors should not lose sight of the contingency of a failure and should blame no one but themselves if they lose their money. (See the *Revue de Droit International et de Legislation Comparée*, T XIX, 1882, p. 386.)

A like opinion has been firmly sustained by Rolin-Jacquemyns:

The fact that a state [says this author] obligates itself in the contract of debts is an act of sovereignty; the act of paying those debts is another act of sovereignty perfectly distinct from the first. The proof that this is so is that, in our constitutional countries the payment of the interests and the extinguishment of the capital of the debt is not accomplished each year except by virtue of an act of the legislative power in the fullness of its independence. No doubt this act does not create the debt but it does sanction it. If this is so the settlement of the debts of a state can not give rise, at least as a general proposition, to foreign intervention. Besides, foreigners can not well complain of a condition which is common to them and the nationals of the debtor state, and against which they did not have from the beginning any other guaranty than the good faith of the latter and its evident interest in not injuring its credit. Recourse can not therefore be had to intervention except in case in the settlement of the debt certain creditors have been systematically favored to the injury of the others and amongst these last there are the nationals of a particular State.

IV.

A stronger reason than all those expressed is that the debt has been barred.

Therefore it ought to be disallowed.

Caracas, July 19, 1903.

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Joseph Anderson, jr., claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 30.
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DECISION.

Opinion by Bainbridge, Commissioner.

The Commission dismisses the claim, without prejudice, for want of jurisdiction.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Joseph Anderson, jr., claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 30.
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Bainbridge, *Commissioner*.

At the time of the Venezuelan war for independence, Domingo Hernandez and Maria Simana Garcia, Spanish subjects, were compelled to emigrate from Venezuela and their properties therein were confiscated by the Government. In payment for the property thus taken the Government of Venezuela on December 21, 1846, issued to these parties several bonds, bearing interest at 3 per cent per annum from June 22, 1847. The parties named removed to the city of Humacao, island of Porto Rico, where they died, leaving part of said bonds to Fernando Hernandez y Garcia, who died in February, 1896, leaving said bonds to his son Fernando Hernandez y Miguens. On the 18th of June, 1903, the latter conferred "a general and special power of attorney, drawn as required by law, in favor of Mr. Joseph Anderson, jr., resident of Porto Rico, citizen of the United States of America, and a lawyer by profession, so that he might, in the name and representative of the appearing party, and as owner of said five bonds, which he cedes and transfers to him in the legal way, so that he may claim the payment of the same, including the corresponding interest before the Commission named to that effect."

The United States now presents to the Commission on behalf of Joseph Anderson, jr., a claim, based on said five bonds, amounting to 37,250 pesos, principal and interest.

The convention constituting this Commission signed at Washington on the 17th of February, 1903, provides:

All claims owned by citizens of the United States against the Republic of Venezuela * * * shall be examined and decided by a mixed commission, etc.

Claims owned when? Clearly the object of the convention was to provide a method of settlement by arbitration of claims against the Republic of Venezuela owned by citizens of the United States at the time of its negotiation. No other claims could have been within the contemplation of the high contracting parties, and jurisdiction of no other claims is conferred by the convention upon the Commission.

It is neither proved nor even alleged that this claim was owned by a citizen of the United States on or prior to February 17, 1903. The claimant Anderson did not become the owner of it until June 18, 1903, if indeed, from the evidence presented here he can rightly be said to be the owner at all.

The claim is therefore dismissed, without prejudice, for want of jurisdiction.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

DECISION.

THE UNITED STATES OF AMERICA, ON BEHALF of Joseph Anderson, jr., claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 30.
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The above-entitled claim is hereby dismissed, without prejudice, for want of jurisdiction.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTÁRIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered August 25, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of the Caracas and La Guayra Cable Com- pany, claimant, by Theodore W. Tyrer, its president, v. THE REPUBLIC OF VENEZUELA.	}	No. 31.
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BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of the Caracas and La Guayra Cable Company, by Theodore W. Tyrer, its president, for the sum of \$286,600. The claimant, the Caracas and La Guayra Cable Company, is a corporation duly organized and incorporated under the laws of the State of Virginia.

The claim arises from the acts of the Venezuelan Government during the years 1887 to 1890, when the claimant was in possession of a concession for the construction of a gravity cable road connecting the cities of Caracas and La Guaira. The claimant corporation, within the time fixed for the commencement of construction work, began operations and imported from the United States tools and materials. It engaged workmen and engineers and established offices at considerable expense. After the work had progressed for a period of about two weeks, the Government of Venezuela ordered the claimant to cease operations upon the ground that the claimant intended to grade the roadbed through an ancient cemetery in the line of the road shown by approved plans thereof. The issuance of this order violated the provisions of the contract which provided that all controversies should be referred to competent courts of the Government. The claimant endeavored to have the order vacated when it appeared that it was issued for the ostensible reason that the cemetery contained the remains of persons who had died of cholera in 1855, and that the excavation of this land might endanger the public health. On this point a written opinion was submitted by the national board of health, by which it was shown that there would be no danger from such excavation.

It had been agreed by the President of Venezuela with the representative of the corporation previously to the report of the national board of health that if this board should make a satisfactory report the work might then progress. Subsequently, and after the report, the President receded from this agreement, making as an excuse that many persons still feared that the excavation might cause an epidemic, and insisted that the city board of health should make a report. The city board of health, after investigating the matter, made a report directly opposite to that which had been made by the national board of health. The President of Venezuela then took the stand that he did not care to decide between the two reports and that therefore the work must cease. The claimant called the attention of the President of Venezuela to the fact that on the opposite side of the street along which the railroad was to run there had been constructed a hospital building for a distance of two blocks and that the ground upon which it was located had been excavated through the old burying ground and the excavation thrown into the ravine in the same manner as the company had proposed to do.

Finally, in 1890, the Venezuelan Government issued a modification of the original order stopping the work, whereby the claimant was directed to change the proposed route. The claimant thereupon employed competent engineers who, after careful investigation, reported that a change of the route rendered the project impracticable. Although the claimant used every possible effort to carry out the terms of the concession as agreed to with the Venezuelan Government, it was impossible to do so, and the result was that the undertaking had to be given up with much loss of money expended and much damage from the unwarranted interference by the Government.

We submit that the favorable report of the national board of health, to the effect that there would be no injury to the public health, and moreover, that on the same piece of ground where the company was to construct its line a hospital had been constructed, where it is to be presumed the health of the patients was the first consideration, were sufficient facts to justify the presumption that no injury could result

from the excavation. We also submit that the report of skilled engineers that the project could not be carried out from any other point should have been taken into consideration by the Government of Venezuela and that the claimant should have been allowed to continue its work as originally designed in accordance with its approved plans. In view of the large amount of money expended and the value of this concession, we feel that the amount of this claim is fair and moderate and that an award should be made for its full amount.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

THE CARACAS AND LA GUAYRA CABLE COMPANY, }
v. } No. 31.
VENEZUELA.

ANSWER.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied the claim presented by the Caracas and La Guayra Cable Company, arising out of the alleged breach on the part of Venezuela, of a contract made and entered into by the claimant and Gen. Guzman Blanco, in the name of the Republic, on December 2, 1887; and respectfully shows to the tribunal:

As is seen by the report made at the instance of the undersigned, by the office of the minister of public works, the contract made between the company claimant and the Government had in view the construction of a cable between the cities of Caracas and La Guayra, which was to have been accomplished by means of a tunnel through the mountains in a straight line between the two cities. The contractor covenanted to begin the work within the space of nine months, reckoned from the date when the concession should be ratified by Congress. After various extensions conceded by the Government with the object of facilitating the execution of the work, the contractor gave notice on the 6th of August, 1890, that he had commenced the work. On the 30th of the same month the Government, in view of the fact that the plan of the line was projected over the lot where, in 1855, the victims of the cholera epidemic had been buried, ordered the suspension of the work until a medical commission could be consulted which would give an opinion as to the advisability of its continuation.

There is no doubt, but the Government, in consideration of the danger, proximate or remote, which might result to the public health from the excavations, was bound to proceed as it did. The contractor fully recognized this authority, and as the medical report, which was in fact given, opposed the continuation of the work, Mr. Tyrer informed the Venezuelan authorities that, not wishing to cause any injuries on account of the causes mentioned, he would prefer to lose the work done and lay out a new line over to the east or to the west of that already planned, reserving the right to choose the place which was most convenient to the public interests and those of the enterprise which he represented, for which he would present new plans.

The Government having agreed to this proposition, the claimants said that they would submit the new plan to the board of directors resident in the United States.

No other action has been taken since that date by the company, and, considering the abandonment for such a long time of the work begun, the Government justly supposed that it had renounced the concession.

It now appears from the brief of the honorable agent of the United States that the engineers consulted concerning the new plan of the line, considered that it would not be possible to complete it in the manner last proposed by the same contractor.

It must be remembered that such report was never communicated to the Government of Venezuela which, up to the present, was ignorant of this circumstance. On the other hand, it is not conceivable that the construction company would have omitted to take any action, going to the extreme that when the Venezuelan Government, considering said concession abandoned, contracted on the 29th of April, 1893, with Mr. Frank B. Merrill for the execution of a similar work, it did not take any steps to enforce the rights which it might have, and made no protest to that end.

The undersigned produces in two pamphlets the record on file in the office of the minister of public works respecting the concession which gives rise to this claim. From his acts and from the confession itself of the claimant, Mr. Tyrer, it is seen:

(1) That the Government of Venezuela exercised a perfect right and pursued a course which the duty of safeguarding the public health imposed upon it, when it ordered the suspension of the work;

(2) That the contractor of the enterprise, Mr. Tyrer, of his own free will, proposed the modification of the plan of the line;

(3) That the contractor, as is shown by the report of the engineers named by the Venezuelan Government, which appears in the second pamphlet of the record produced, never fulfilled the obligation of presenting to the minister the plans of the work;

(4) That it is not proved that he communicated to the Venezuelan Government the report of the engineers upon which his claim is founded; and

(5) That the omission of all action, with a view of continuing the work for a long period of time, and his absolute silence when the Merrill concession was granted, prove the voluntary abandonment of his own.

It not having been demonstrated, therefore, that the Venezuelan Government has violated any of the articles of the contract made in 1887, its liability can not be sustained.

F. ARROYO PAREJO.

CARACAS, *July 18, 1903.*

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the Caracas and La Guayra Cable Com- pany, claimant,	} No. 31.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

DECISION.

Opinion by Bainbridge, Commissioner.
The Commission disallows the claim.
September 8, 1903.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the Caracas and La Guayra Cable Com- pany, claimant,	} No. 31.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

BAINBRIDGE, Commissioner:

On the 2d day of December, 1887, a contract was signed in Paris by and between Guzman Blanco, formerly President of Venezuela and at the time Venezuelan minister to France, and T. W. Tyrer, attorney in fact of the Caracas and La Guayra Cable Company. The contract thus signed, subject to ratification by the Government of Venezuela, granted to the corporation named, inter alia, the following:

(1) The exclusive right to construct, maintain, and operate a cable road between the cities of Caracas and La Guayra for the term of ninety-nine years.

(2) The right to construct a tunnel between Caracas and La Guayra; also a wagon road through the said tunnel.

(3) The right of transit in the city of Caracas, passing through the streets where this may be necessary, for the purpose of extending its lines as far as North avenue and Thirteenth street.

The company was required to begin the work of constructing the cable road within nine months, reckoned from the day on which the concession should be ratified by the Government of Venezuela according to law and thus be rendered valid; and to finish the road within three years from the day on which the work commenced.

The Caracas and La Guayra Cable Company was incorporated under the laws of the State of Virginia on the 11th day of May, 1888. On May 28, 1888, T. W. Tyrer transferred to said company all the rights and obligations under the contract, C. F. Norment, the secretary of the company, receiving the transfer on its behalf.

On or about March 17, 1888, the President of the Republic of Venezuela, with the approval of the Federal Council, ratified in all its parts the contract signed in Paris on December 2, 1887, between Guzman Blanco and T. W. Tyrer. The contract was approved by act of Congress dated August 10, 1888.

The Government granted the company various extensions of time for beginning the work, which was finally commenced on August 6, 1890. On the latter date the company addressed to the minister of public works the following communication:

[Translation

CARACAS, August 6, 1890.

CITIZEN MINISTER OF PUBLIC WORKS,

Present:

In conformity with the requirements of the law I had the honor to inform you on the 1st instant that the Caracas and La Guayra Cable Company would commence its work to-day.

To that effect and in accord with the opinions of the engineers who have been engaged in this work the plan for the preliminary works has been prepared and the survey made of the lines which shall comprise the station and the streets where the railway shall pass, starting from a line parallel to the west end of the hospital Vargas up to the foot of the mountain where the mouth of the tunnel shall be opened.

The station will be located between the prolongation of the Avenida Norte and North Second street in conformity with article 7 of our contract with the National Government.

I have the honor to give this notice to you in order that you may bring it to the knowledge of the citizen President of the Republic, so that if he judges it proper and convenient he may give his approval to our dispositions.

With sentiments of esteem, I am, etc.

(Signed) T. W. TYRER.

The company began the work with a force of some 65 men. The work on the grading continued between two and three weeks, when the Government ordered it stopped on account of the fact that the line and excavations extended through a cemetery in which the victims of the cholera epidemic of 1855 had been buried.

On August 30, 1890, the minister of public works wrote the company as follows:

[Translation.]

CARACAS, August 30, 1890.
27 and 32.

T. W. TYRER, Esq.,

*Representative of the cable road company
between this city and the Port of La Guayra:*

The President of the Republic has ordered me to inform you that, in order that the cable road company may not suffer damage by the suspension of its work and while the question is decided as to whether its lines should or should not be extended to the cholera cemetery, which question is now being subjected to a full and careful examination, the company may again undertake the work, starting from the opposite bank of the stream north of said cemetery toward the Avila.

As soon as a decision is reached as to whether the land occupied by the cholera cemetery can be used for the work, the result will be communicated to you.

Dios y Federacion.

(Signed) TERRERO ATIENZA.

The question whether the excavations in the cholera cemetery would endanger the public health was submitted to the doctors, who as usual disagreed. The National Board of Health reported that there was absolutely no danger from having the ground opened, whereas the city board of health made a report directly opposite. The President of the Republic being liable at any time to need a physician, discreetly refused to determine between the two reports.

On September 15, 1890, Mr. Tyrer, the general superintendent of the company, wrote the minister of public works the following letter:

CITIZEN MINISTER OF PUBLIC WORKS,

Present:

T. W. Tyrer, superintendent general and representative in Caracas of the Caracas and La Guayra Cable Company, with due respect reports:

In accordance with the contract made on the 2d day of December, 1887, with the National Government for the opening of a tunnel cable road between Caracas and La Guayra, and authorized by the extensions given by the Government of Venezuela for the commencement of the work, we began the same within the period fixed by the last extension allowed, keeping to the plan made by the engineer in chief in charge of the work by which the line was traced along the continuation of the Avenida Norte, as is shown in article 7 of said contract. Unfortunately this line passes through the old cemetery of the cholera victims, a circumstance which, with or without reason, caused great alarm in the city, which caused the Government to order the suspension of work, which circumstance caused us some damage, owing to the amount of money and work we have lost. In spite of the fact that the Government has reserved the right of deciding this question later on, the company I represent, wishing not to cause the Government any inconvenience, prefers to lose what has been done and trace a new line east or west of the present one, reserving the right of option of the one most suited to the interests of the public and the company; said company to present for the approval of the Government the new plan after its acceptance by the engineer in chief, who is at present in the United States, and by the directors of the company. This new plan requires at least sixty days' time and, therefore, I ask of you to inform the citizen President of the Republic of all I have stated above in order that if he wishes and deems same convenient he may issue a resolution through you allowing my constituents to trace the cable line through the part of the city most adapted therefor and declaring that we have fulfilled the clause of our contract which refers to the time fixed for beginning work, so that we may in future have no trouble on this account. I take the liberty of pointing out to you the great importance which the present petition has for the public and the company which I represent, and I request the quickest possible decision of the matters therein contained.

I ask the above as a favor and an act of justice in Caracas on the 15th of September, 1890.

(Signed) T. W. TYRER,

General Superintendent Caracas and La Guayra Cable Company.

To this letter the minister of public works made the following reply:

[Translation.]

No. 1415.]

DIRECTION OF WAYS OF COMMUNICATION AND AQUEDUCTS,

Caracas, September 27, 1890.

Mr. T. W. TYRER,

Representative of the Cable Road between Caracas and La Guaira:

This ministry has to-day dictated the following resolution: The communication directed to this ministry by the representative of the Caracas and La Guayra Cable Company, wherein it is manifested that the National Government directed the suspension of the works on account of the line passing through the ancient cemetery, where those who died with cholera were buried, and in which he asks for sixty days to make a new survey and submit new plans to the Government without prejudice to the national contract, has been duly considered in cabinet, and in view of the information given by the medical council, in which they affirm that by opening the road through this ground the public health might be endangered; and in consideration of the fact that the work under this contract was commenced within the time fixed by the law, the President of the Republic, with the vote of the Federal Council, has been pleased to grant the company not only the sixty days asked, but has extended the time in which to make the new surveys and present a plan to ninety days, which time can not be extended. Article 7 of the contract is therefore modified in relation to that portion referred to by this resolution, and the company is hereby authorized to survey a road as far as the slope of the Avila, well to the east or west of Avenue North, provided it avoids the space occupied by the above-mentioned cemetery.

Forwarded to you for your information and guidance.

(Signed)

F. TERRERO ATIENZA,
Minister of Public Works.

Pursuant to the agreement expressed in the foregoing, the company made a new survey, and on December 20, 1890, reported the same to the Government in the following letter:

CARACAS, *December 20, 1890.*

CITIZEN MINISTER OF PUBLIC WORKS, *Present:*

In the capacity of representative, for the present, of the Caracas and La Guayra Cable Company, I have the honor of informing you, in order that you may communicate same to the Supreme Magistrate of the Republic, that the company I represent, in compliance with the resolution made by your ministry, has fixed the line of the cable road which it has agreed to build between this city and the port of La Guaira, by the northeast part of the city, crossing the lands known as "La Cuadra," as you will observe in the plan inclosed, which I beg you to submit to the approval of the Government in order that we may continue the work as soon as possible. I inclose herewith, for the purpose of being returned, the power of attorney constituting me the representative of the Caracas and La Guayra Cable Company.

With sentiments of consideration, etc., I am,

Your obedient servant,

(Signed) J. I. JOHNSON.

The Government submitted the new survey to a commission of three persons, who, on January 10, 1891, rendered a report as follows:

CARACAS, *January 10, 1891.*

CITIZEN MINISTER OF PUBLIC WORKS, *Present:*

Complying with the resolution of your ministry, dated the 2d of this month, which you communicated to us, we met with the purpose of examining the new plan which the Cable Road Company between this city and the port of La Guaira has made for the said line; but we have met with the obstacle that the plans sent to your ministry by said company are incomplete in the extreme, so that upon inspection of them no exact judgment of the projected work can be formed.

We therefore requested the citizen minister to require the following of the projectors:

- (1) A section plan of the land chosen for the line (small scale).
- (2) A plan of the projected line.
- (3) The longitudinal and transverse profiles.
- (4) The plans of the works of art to be constructed.
- (5) A report on the manner in which the construction of the tunnel, its ventilation and drainage are to be carried out; and
- (6) A general report on the work, including therein the expropriations.

The above, citizen minister, is all we can report to you for the present respecting the work submitted to our consideration.

Dios y Federacion.

GUALTERIO CHITTY.

E. GOMEZ FRANCO.

AUGUSTO FA CHEBBA.

On January 14, 1891, the company wrote the minister of public works as follows:

CARACAS, VENEZUELA, *January 14, 1891.*

GERMAN JIMENEZ, Esq.,

Minister of Public Works of Venezuela.

SIR: I received your favor of the 14th instant, giving me a list of information and data needed by the commission appointed by you to revise the plans of the Caracas and La Guayra Cable Company.

Mr. Crowson represented me before the commission when I was called, and he informed them (you were not present at the time) that the original plans and minutes (specifications) were in Washington and that I was going to said city on the 21st instant.

On my arrival your note will be handed to the company with the request that they send to you as soon as possible the required data.

I have the honor to be,

Your obedient servant,

(Signed) J. JOHNSON.

At this point the correspondence between the parties ended, and it does not appear that the company made any further efforts to carry on the enterprise.

A claim is now presented to this Commission on behalf of the Caracas and La Guayra Cable Company in the sum of \$286,600. The claim is summarized as follows:

Value of concession.....	\$250, 000
Cost of procuring concession	5, 000
For the salary and expenses of the expert engineer in locating the line and determining the amount necessary to construct and equip the line for business	5, 000
Cost of engineer work in planning route and in making estimates and detailed plans for construction, equipment, and maintenance of road....	15, 000
Cost of tools, drills, etc., bought and shipped to Caracas	3, 000
Clerk hire and labor incident to office at Caracas	3, 600
Also expenses of labor and grading, attorney's fees, and Spanish assistants employed during 1888, 1889, and 1890 in matters relative to the work....	5, 000
	<hr/> 286, 600

The claim is founded upon an alleged violation of the original contract or concession of December 2, 1887. The memorial states that the Government of Venezuela "in violation of the express provisions of said grant did interrupt the work of construction of said cable road and prevented the claimant from proceeding under said concession in the performance of acts expressly provided for in said grant;" that the route originally selected was "the only feasible route by which the road could be constructed upon the proposition agreed upon in said contract;" that this route was "submitted to the proper authorities of Venezuela and approved;" that the order stopping the work was without just cause or excuse and violated Article XV of the contract, which provided that all controversies should be referred to the competent courts of the Government; that the claimant made various efforts to have said order vacated, all of which efforts were unavailing; and that on September 27, 1890, a modification of the original order stopping the work was made by the Venezuelan Government, whereby the claimant was directed to change the route from that formerly agreed upon, and the construction of said road was thereby made impossible.

In our view of this case the question whether the objection raised by the Government of Venezuela to the route through the cemetery of the cholera victims was or was not a violation of the original contract is immaterial. The correspondence quoted above clearly shows that there was, subsequent to the order of the Government stopping the work, an express waiver by the company of any loss or damage sustained by it in consequence of that order, and a plain and unequivocal proposition made by the company "to trace a new line east or west of the present one, reserving the right of option of the one most suited to the interests of the public and of the company," and a request for sixty days' time to make the new survey; and as a consideration for such waiver and change of route the company demanded that a resolution be issued by the Government permitting the company "to trace the cable line through the part of the city most adapted therefor," and declaring that the company had fulfilled the clause of the contract referring to the time fixed for beginning work, so that it would have no trouble in the future on that account.

The Government of Venezuela accepted the proposition of the company, made the desired declaration regarding the time clause of the

original contract, and granted the company not only sixty but ninety days to enable it to complete the new survey; and on December 20, 1890, the company submitted its new plans, fixing the line "by the northeast part of the city, crossing the lands known as 'La Cuadra,'" to the Government for its approval.

Thus there was an express modification of the original contract by agreement of the parties thereto, the proposition for such modification emanating from the claimant company. There is no claim that the Government of Venezuela interfered with or prevented the construction of the road under the contract as modified.

Indeed it is difficult to perceive wherein the Venezuelan Government can be justly charged with any deliberate intention to injure this claimant. On the contrary it appears to have exercised a considerable degree of patience and consideration toward the company, granting its repeated requests for extension of time for beginning the work, which it had contracted to undertake within nine months after ratification. In consequence of the public alarm caused by the excavation of the old cemetery, the Government stopped the work there, but promptly granted the company's request to allow the continuance of the work beyond that point. And it as promptly accepted the proposition for a new route, giving the company the assurance asked that it would not in the future be held in default for its delay in beginning the work as the original contract required.

From all the evidence presented in connection with this claim, the Commission is able to reach but one conclusion, which is that the Caracas and La Guayra Cable Company voluntarily abandoned the costly enterprise it had undertaken.

The claim must be disallowed.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

DECISION.

THE UNITED STATES OF AMERICA ON BEHALF of The Caracas and La Guayra Cable Com- pany, claimant,	} No. 31.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

The above-entitled claim is hereby disallowed.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to decision.

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered September 8, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the Thomson-Houston International Elec- tric Company, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 32.
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This claim was presented to the Commission on the memorial of the claimant, and was supported at the time of presentation by the agent of the United States in an oral argument. A brief was filed by the agent of Venezuela in answer and a brief was filed by the agent of the United States in replication.

[Translation.]

THE THOMSON-HOUSTON INTERNATIONAL ELEC- tric Company v. VENEZUELA.	}	Claim No. 32.
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ANSWER.

To the honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the United States of Venezuela, has studied the claim presented by the Thomson-Houston International Electric Company, and respectfully states to the tribunal:

Your exponent deems that claims coming within the class of the present, that is to say, originating from contractual obligations still in force between the parties, can not be determined by this honorable Commission. While neither denying or consenting, in principle, to the debt which the claimant company may have against Venezuela, the undersigned must observe that, in accordance with the protocol signed in Washington by both Governments, it is agreed that all claims owned by American citizens shall be decided on a basis of absolute equity. In the concrete case, the claimant has made a contract with the municipality of Valencia, and it is under the obligations derived from such agreement that he bases his claim. As the municipality referred to has no voice or hearing before this tribunal, it could not submit the exceptions which by right belong to it, and its position would therefore be disadvantageous and opposed to that principle of jurisprudence and equity which demands equality of conditions between contending parties.

For the reasons set forth the undersigned believes that this claim does not fall within the jurisdiction of this tribunal, but that it must be determined by the ordinary tribunals and with all the formalities of procedure established by the local laws, to which the contracting parties have expressly submitted themselves by the contract itself which binds them. Contract entered into on the date of the 21st of December, 1887.

F. ARROYO PAREJO.

CARACAS, *July 18, 1903.*

S. Doc. 317, 58-2—24

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the Thomson-Houston International Electric Company, claimant,	} No. 32.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

REPLICATION ON BEHALF OF THE UNITED STATES.

In the answer of Venezuela the sole point raised is one of jurisdiction of this Commission over the claim in question, it being contended that the claim should be decided by a local tribunal in which the municipality of Valencia might appear as one of the parties.

On this point we submit that the Government of Venezuela has entered into an agreement by which all unsettled claims of citizens of the United States shall be examined and decided by this high Commission and that by virtue of this agreement it has deprived itself of the right to assert that such claims of citizens of the United States should be determined by its local courts. Venezuela does not deny in principle this claim, and this Commission, which has absolute jurisdiction over the matter, should render an award in this case for the amount claimed.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the Thomson-Houston International Electric Company, claimant,	} No. 32.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

DECISION.

Opinion by Doctor Paul, Commissioner.

The Commission dismisses the claim, without prejudice to the claimant, for want of jurisdiction.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Thomson-Houston International Electric Company, claimant,	} No. 32.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

Doctor PAÚL, *Commissioner*:

This company, as claimant, presents itself to this Commission, pretending that the Government of Venezuela should be made directly

responsible for the payment of the balance of a credit against the municipality of the city of Valencia, amounting to 48,005.28 bolivars up to May 30, of this year, for the service of public electric lighting for previous years and continued up to date by said company under its contract.

Amongst the documents presented, there is a copy of the original contract between the national Executive and Miguel J. Dooley, dated September 21, 1887, granting to the latter for the term of twenty-five years the exclusive right to establish in the territory of the Republic the electric-light system; the grantee having to make special arrangements with the different municipalities for the establishment of the electric lighting in their respective localities.

From the copies of diverse arrangements made with the municipal board of Valencia, annexed to the memorial, it appears that said corporation acknowledges as correct the balance due to the company presented for collection and found in accordance with the corporation's books; said corporation claiming at the same time that the company owed, on its side, up to June 26, 1902, the sum of 2,333.35 bolivars for municipal taxes, of 1,000 bolivars per annum, levied by said corporation on the electric-light company from October 15, 1901. The Thomson-Houston International Electric Company denies to the municipality of Valencia the right to levy an annual tax for the exercise of their industry, basing their arguments on the terms of the original grant of the national Government; that in article 4 it states that the said industry would be exempt of the payment of any national, State, or municipal taxes.

The account kept by said company with the municipality of Valencia, up to May 31, 1903, has been presented to this Commission, and said account shows that the company has been receiving lately (in the months of February, March, April, and May) cash payments on account, amounting to 21,280 bolivars, and the company from the month of March reestablished the public lighting service of fifty arc lights that had been suspended from June, 1902, until February, 1903. This circumstance proves that the business relations between the Thomson-Houston International Electric Company and the municipality of Valencia were in activity by a mutual agreement, and it can not be understood why said company pretends to claim from the national Government the payment of the balance of a current account kept with a municipality of one of the Federal States, while the interested parties kept in activity the credit and debit of their account.

This Commission ought to dismiss this claim for lack of jurisdiction without prejudice to the claimant.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

DECISION.

THE UNITED STATES OF AMERICA ON BEHALF of the Thomson-Houston International Elec- tric Company, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 32.
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The above-entitled claim is hereby dismissed, without prejudice to
the claimant, for want of jurisdiction.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered September 18, 1903.

Before the Mixed Commission organized under the protocol of Febru-
ary 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Henry C. Bullis, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 33.
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This claim was presented to the Commission on the memorial of the
claimant, and was supported at the time of presentation by the agent
of the United States in an oral argument. A brief was filed by the
agent of Venezuela in answer, and a brief was filed by the agent of the
United States in replication.

[Translation.]

HARRY C. BULLIS v. VENEZUELA.	}	Claim No. 33.
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ANSWER.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the United States of Venezuela, has stud-
ied the claim presented by the American citizen Harry C. Bullis, and
respectfully shows to the tribunal:

The present claim arises from the detention in the first place and the judgment thereafter rendered by the tribunals of the State of Zulia against the claimant, for having committed the offense which article 477 of the Penal Code in force defines and classifies.

It appears from the documents produced by the claimant himself that the local tribunals, following strictly the proceedings provided for in the laws of criminal offenses existing in Venezuela, sentenced and condemned him.

The Department of State of the United States, answering the petition instituted by the lawyers of the claimant for intervention, says literally: "That the only proof adduced in support of the claim of Bullis consists in his declaration." In effect it appears that the claimant, be it on account of his imprudence or deliberate participation entered into by him, found himself compromised by the fact, properly proved, of having in his residence explosive materials.

No responsibility can be attached to the Government of Venezuela because its judicial authorities have in this case applied the penal law.

With regard to what concerns the acts of instruction, of jurisdiction, and of repression exercised in foreign countries upon transgressors of other States, the general principle is: That the stranger is subject to the system of common law applicable to citizens. (Pradier Fodéré Droit International Publique, paragraph 204, vol. 1.)

In order that the claim might be a legitimate one, it would have been necessary to prove in the first place a denial of justice, and in the concrete case it appears to have been prompt and expeditious. (See the communications of Consul Plumacher.)

As a general rule, the intervention on the part of foreign governments is only justified in the following cases: (1) When there has been a violation of the law of nations; (2) when there is proof of an arbitrary procedure, or a denial of justice on the part of the local authorities; (3) in the case of a manifest injustice in violation of the established forms or oppressive distinctions between citizens and foreigners; (4) when there has been a violation of a public treaty, and (5) when the local authorities have exceeded their jurisdiction.

In the present case none of the circumstances above indicated has been proved by the claimant; therefore the liability of the Government of Venezuela can not be sustained.

Caracas, July 18, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Henry C. Bullis, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 33.
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REPLICATION ON BEHALF OF THE UNITED STATES.

The United States has presented in this case the claim of Henry C. Bullis for damages for arrest, imprisonment, and unlawful detention at Maracaibo, Venezuela, amounting to \$50,000. His complaint relates to his arrest at Maracaibo while employed there as chief mechanical and electrical engineer by the Maracaibo Electric Light Company.

From the memorial submitted to this Commission, it appears that

some of the employees of the company were sympathizers with the Venezuelan revolutionary party, then preparing for an uprising. Mr. Bullis was arrested, being charged with making explosives and concealing arms and ammunition, which is prohibited by the Venezuelan law. Mr. Bullis had become aware of the fact that certain explosives and war materials were being brought to the premises of the Electric Light Company and left there for distribution throughout the city by a man named Jimenez. As these materials began to accumulate he urged Jimenez to remove them, but he was advised that the materials were to be held there awaiting orders from the parties to whom they were to be delivered. Thereupon Mr. Bullis called upon the President of the State of Zulia, Gen. Emilio Valbuena T., to whom he gave information concerning the storage of these explosives. His arrest was brought about by an arrangement with the President, whereby he was to transfer a portion of the war material from the electric-light station to his own house, so as to afford a pretext for placing him under arrest, and whereby he was subsequently to be honorably discharged. His reason for entering into this arrangement was that he feared that he would suffer bodily injury at the hands of the revolutionists if it became known who gave the information concerning the explosives. Accordingly, the following day, President Valbuena went to the house of Mr. Bullis and caused a search to be made. The result was that Mr. Bullis was placed under arrest. The agreement entered into was not carried out and Mr. Bullis was held for trial. A trial was had in the court at Santa Barbara and the claimant was convicted and sentenced to three months imprisonment. An appeal was thereupon taken to the district court at Maracaibo, which confirmed the judgment of the lower court. The matter was subsequently called to the attention of the United States legation at Caracas, and through its efforts a telegram was sent by President Castro directing the release of Mr. Bullis. He was placed at liberty two weeks before the expiration of his sentence.

The letters accompanying the memorial of the claimant go to show that Mr. Bullis had never meddled in the politics of the country and that he was highly respected as a resident of Maracaibo. It is evident that he was innocent and that he was the victim of unfortunate circumstances. The most that can be said against him is that he was overzealous in his desire to aid the recognized Government of Venezuela with the knowledge in his possession.

The Republic of Venezuela should respond in damages upon the facts in this case for the arrest and detention of the claimant.

For the law governing such cases reference may be had to the fourth volume of Moore's International Arbitrations, page 3235 et seq. In the cases there collated there has universally been held to be a liability for arrest and imprisonment without cause, for undue detention, even where the arrest was based upon probable cause, and for harsh and arbitrary treatment during imprisonment whether the arrest was warranted or not. Applying these principles, as to which there can be no question, to the facts in this case, we submit that an award should be made for the claimant.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Henry C. Bullis, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 33.
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DECISION.

Opinion by Bainbridge, Commissioner.
The Commission disallows the claim.
September 1, 1903.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Henry C. Bullis, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 33.
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BAINBRIDGE, *Commissioner*.

Henry C. Bullis, a native-born citizen of the United States, in August, 1900, and for nearly two years previous thereto, was employed as chief mechanical and electrical engineer by the Electric Light Company of Maracaibo, Venezuela. Some of the employees of the company were sympathizers with the revolutionary party, then making preparations for an uprising. Quantities of bombs, cartridges, and other munitions of war were brought to the electric-light works, stored there, and taken from there for distribution throughout the city to members of the revolutionary party. Some of the bombs were found by the Venezuelan authorities at the electric light works in a room to which Bullis had a key, and in his private residence several firearms and a quantity of cartridges for Mauser rifles were found.

Bullis was arrested, charged with a violation of the laws of Venezuela. He was tried in the municipal court of Santa Barbara, convicted, and on November 8, 1900, was sentenced to an imprisonment of three months in the public jail. The case was appealed to the district court of Maracaibo, and the sentence of the lower court was affirmed on November 26, 1900, the court stating in its judgment that "the guilt of said Henry C. Bullis is plainly proven." Through the intervention of the United States legation at Caracas, Bullis was liberated two weeks before the expiration of his sentence.

A claim is here presented on behalf of Bullis in the sum of \$50,000 for wrongful arrest and imprisonment.

A careful examination of the evidence presented in this case convinces the commission that Bullis was arrested, tried, and convicted in strict accordance with the laws of Venezuela to which he was at the time subject and in conformity with the usual procedure of its courts; that his trial was not unnecessarily delayed; that he was provided with counsel; that he was allowed to communicate with the representative of his Government; that there was no undue discrimination against him as a citizen of the United States, nor was there, in his trial, any violation of those rules for the maintenance of justice in judicial inquiries which are sanctioned by international law. It does

not appear that he was subjected to any unnecessarily harsh or arbitrary treatment during his imprisonment.

The respondent Government has incurred no liability to this claimant. Every nation, whenever its laws are violated by anyone owing obedience to them, whether he be a citizen or a stranger, has a right to inflict the prescribed penalties upon the transgressor if found within its jurisdiction; provided always that the laws themselves, the methods of administering them, and the penalties prescribed are not in derogation of civilized codes.

The claim must be disallowed.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

DECISION.

THE UNITED STATES OF AMERICA ON BEHALF of Henry C. Bullis, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 33.
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The above-entitled claim is hereby disallowed.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered September 1, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of John Baptiste Ferreol Ponsot Monnot, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 34.
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BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of John Baptiste Ferreol Ponsot Monnot, for the sum of \$206,681.12 and interest, for damages and losses occasioned by the illegal and wrongful acts of the Government of Venezuela.

I.

STATEMENT OF FACT.

The claimant is a citizen of the United States, having been born at Clason Point, Westchester County, in the State of New York. The

claim arises from the acts of the Venezuelan authorities, who seized the goods and properties of claimant at the town of Amacuro, British Guiana, and thereby destroyed his business. The town of Amacuro is located in the territory awarded Venezuela by the Paris court of arbitration. The claimant had located his business there in 1899. During the temporary absence of the claimant from Amacuro a commissioner of the collector of customs at Ciudad Bolivar came to Amacuro and took possession of the property of the claimant. The claimant thereupon made formal protest and declaration before the judge, the collector of customs, and the inspector-general of customs. These officials admitted that the action taken against the claimant was improper, and offered to arrange matters by returning the property of the claimant if he would agree to waive all rights for losses sustained by their orders or by the acts of the Government's representatives, and pay duty in accordance with the Venezuelan tariff. The claimant informed them that their arbitrary action had made it impossible for him to continue his business.

On the 18th of February, 1901, the judge of hacienda delivered an opinion dismissing all charges against the claimant, without costs.

The claimant was engaged in the business of gathering balata gum on the Amacuro and Berrima rivers, and after the seizure of his store had no means of supplying the goods to the large gangs of men employed by him. All of these men were largely indebted to him for advances in cash and supplies, and as soon as they understood the situation they took advantage of it and ran away with the balata gum which had been collected. In addition to the large number of men whom the claimant had employed, he had made arrangements in Berbice with his foreman to bring additional gatherers for the new season beginning in January. He was unable to put these men to work on account of the action taken against him, and in consequence was subjected to the loss of profits for the season of 1901.

II.

The Venezuelan Government is responsible for the damages which accrued to the claimant by reason of his having been illegally deprived of his property and for the loss to his business.

It is perfectly clear from the facts in this case that the Government of Venezuela is directly responsible for the illegal acts of which complaint is made. The wrongfulness of the action taken against the claimant was shown by the decision of the judge of hacienda.

The rule of international law, as to the responsibility of a government for illegal acts of this character, has been established beyond a question. See, especially, the following cases and decisions of former arbitration commissions cited in Moore's work on international arbitration: The case of Rivas, at page 3780, where an embargo was placed on certain property by Spain and subsequently released as not being properly taken, and the Spanish Government was held by the commission liable for the loss caused by the retention and embargo. Also see case of Madan, at page 3781, and the case of Mora and Arango, on page 3782, of the same work.

There can, therefore, under the authorities be no doubt that an

award should be made for the damage claimant has suffered by reason of the illegal taking of his property and the destruction of his business.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

JOHN BAPTISTE FERREOL PONSOT MONNOT }
v. } No. 34.
VENEZUELA.

ANSWER.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of Venezuela, has studied the papers of the claim of Mr. Jean Baptiste Ferreol Ponsot Monnot, and respectfully shows to this tribunal:

The present claim arises out of damages suffered in the property of the claimant by acts of Venezuelan authorities. It appears from the argument of the honorable agent of the United States that a judicial process was instituted against the claimant in proper form, that it ended with a final judgment.

One of the essential proofs which ought to have been brought forward to sustain the claim is the certified copy of the judgment aforesaid, in order that, by examining it, it could be determined if there had been a denial of justice. This proof has not been furnished.

As to the rest, the claimant has not shown by any sort of proof the amount of damages suffered; therefore, there is nothing as to this except his own affirmation. There is no doubt but that the proceeding of the Venezuelan authorities was in perfect accord with local legislation, since a judgment was obtained in proper form.

The undersigned has found it impossible to secure any information respecting this matter, owing to the abnormal condition of the State of Guayana, in the archives of which should be found all of the proceedings.

As this is, above all, a tribunal of equity, the undersigned makes this argument in order that it may be taken into consideration upon the rendering of a final judgment.

Caracas, July 20, 1903.

F. ARROYO PAREJO.

The United States and Venezuela Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF }
of John Baptiste Ferreol Ponsot Monnot, } No. 34.
claimant, }
v. }

THE REPUBLIC OF VENEZUELA.

DECISION AND AWARD.

Opinion by Bainbridge, Commissioner.

The Commission awards to the claimant the sum of \$4,692.08, United States gold.

SEPTEMBER 22, 1903.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF
of John Baptiste Ferreol Ponsot Monnot,
claimant,
v.
THE REPUBLIC OF VENEZUELA. } No. 34.

BAINBRIDGE, *Commissioner*:

The claimant is a native citizen of the United States. In November, 1899, he established a store at Amacura, British Guiana, for the purpose of supplying men employed by him in collecting balata gum, as well as for the sale of supplies and a general trading business. The town of Amacura is located in the territory awarded Venezuela by the Paris Court of Arbitration. On December 4, 1900, during Monnot's absence from Amacura, a commissioner of the collector of customs at Ciudad Bolivar came to Amacura, seized claimant's goods, and closed his store. A suit was initiated against Monnot before the judge of finance in Ciudad Bolivar on the charge of smuggling certain merchandise, but it was shown at the trial that the last shipment of goods received by him was on October 19, 1900, while the territory was still in British possession, whereupon a decree of dismissal was entered in the action on February 8, 1901, and upon appeal to the Supreme Court of Finance in Caracas the judgment of the lower court was affirmed on March 16, 1903. The claimant states that in January, 1901, his representative having been expelled from Amacura, the Venezuelan authorities took and sold the greater part of his goods and removed the balance from his store; that as he had no means of supplying the large gangs of men employed by him with goods, and who were largely indebted to him for advances in cash and supplies, they took advantage of the situation and ran away, taking with them the gum they had gathered. He also claims that he had engaged men for the season of 1901 and was unable to put them to work and as a consequence lost the profits for that year.

Mr. Monnot summarizes his claim as follows:

(1) Value of goods seized as per inventory.....	\$2,433.97
(2) Amount lost in advances made to balata gatherers who ran away....	5,974.07
(3) Value of the balata gum stolen by said men, 64,800 pounds, at 50 cents per pound.....	32,400.00
(4) Salaries paid to employees since December, 1900, to February, 1901, three months, at \$225 per month	675.00
(5) One breech-loading shotgun and one revolver taken from my representative.....	135.00
(6) Expenses occasioned by the case, such as traveling	2,500.00
(7) Attorneys' fees in Ciudad Bolivar as per receipt, 7,800 bolivars.....	1,500.00
(8) Indemnity for personal time, attention, inconvenience, etc., occasioned in defense of the case	10,000.00
(9) Indemnity for the loss of the gathering season 1901, for which arrangements and contracts had been made.....	52,000.00
(10) Indemnity for the loss of all business prospects of my enterprise at Amacura.....	100,000.00
	<hr/> 207,618.04
Credit less amount obtained by sale of goods remaining sold by order of the court of hacienda, paid my agent at Ciudad Bolivar November 4, 1901	936.92
	<hr/> 206,681.12

The learned counsel for Venezuela interposes as a defense to this claim that the proceeding of the revenue officers in seizing the claimant's goods was in perfect accord with local legislation. But it is evident from the record in the case that a reasonable inquiry would have disclosed the fact that Monnot had imported the goods prior to the time the Government of Venezuela took possession of the territory. Mr. Monnot's representative testifies that at the time he made "energetic protests" against the seizure.

Only partial restitution was made to the claimant after the dismissal of the case. He is entitled to compensation for the proximate and direct consequences of the wrongful seizure of his property. In the similar case of *Smith v. Mexico*, decided by the United States and Mexican Commission of 1839 (4 Moore, Int. Arb., 3374) an award was made for the value of property lost or destroyed pending the judicial proceedings, with a reasonable mercantile profit thereon.

Items 1, 4, and 5 of his claim are allowed. To this amount is added the sum of \$2,000 for expenses incurred by him in consequence of the suit. From this total of \$5,233.97 must be deducted the sum of \$936.92, the amount obtained by sale of the goods restored by order of the court. Interest is allowed upon the balance of \$4,297.05 at 3 per cent per annum from December 4, 1900, to December 31, 1903, the anticipated date of the final award by this Commission.

As to the remaining items of the claim, the evidence is insufficient to establish any liability therefor on the part of the Government of Venezuela, and they are hereby disallowed.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of John Baptiste Ferreol Ponsot Monnot, clamant, against the Republic of Venezuela, No. 34, the sum of four thousand six hundred ninety-two and 08/100 dollars (\$4,692.08) United States gold, is hereby awarded to said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America, in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,

Commissioner on the part of the United States of America.

J. DE J. PAÚL,

Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,

Secretary on the part of Venezuela.

RUDOLF DOLGE,

Secretary on the part of the United States of America.

Delivered September 22, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of J. B. Bance, receiver in bankruptcy of Ernesto Capriles, for the benefit of Weeks, Potter & Co., Seabury & Johnson, and Johnson & Johnson, American citizens, claim- ants,	} No. 35.
v. THE REPUBLIC OF VENEZUELA.	

BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of J. B. Bance as receiver in bankruptcy of Ernesto Capriles, acting for various creditors of said bankrupt, among whom are the firms of Weeks, Potter & Co., Seabury & Johnson, and Johnson & Johnson, whose claims respectfully amount to 11,153.64 bolivars, 2,259.84 bolivars, and 2,163.12 bolivars.

This claim arises out of an order No. 1720, drawn by the minister of interior relations of Venezuela, administrative department, under date December 27, 1897, addressed to the minister of finance for the sum of 200,000 bolivars in favor of said bankrupt. The appointment of Doctor Bance under article 805 of the Code of Commerce is submitted in the evidence. There can be no question as to the responsibility of the Government of Venezuela on this conceded obligation. An award should be made by this Commission for the amounts due to the American citizens above named.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

J. B. BANCE	} No. 35.
v. VENEZUELA.	

ANSWER.

Honorable members of the Mixed Venezuelan-American Commission, addressed:

The undersigned, agent of the Government of Venezuela, has studied the claim presented by J. B. Bance in his capacity of receiver in bankruptcy of Ernesto Capriles, and respectfully shows to the tribunal:

The debt claimed arises out of an order drawn by the minister of interior relations, under date of December 27, 1897, against the minister of hacienda and in favor of said Ernesto Capriles for the value of 200,000 bolivars.

It is easy to see that this claim can not be considered by the tribunal; in effect, the order alluded to forms a part of the goods attached and does not belong in particular to any of the creditors. The Commission would lack sufficient information to fix the pro rata which would belong to the American creditors so long as the proceedings in bankruptcy are pending.

Besides, according to the general rules of commercial law, the judicial liquidation of a business corporation constitutes a juridic personality distinct from that of the partners, and also from the creditors thereof, represented by the trustee or receiver named. In the present case said person does not possess the qualifications required by the protocol signed in Washington in February of the present year, in order that he can come before this Commission in the capacity of a claimant.

Therefore the claim ought to be disallowed.

Caracas, July 24, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of J. B. Bance, receiver in bankruptcy of Ernesto Capriles, for the benefit of Weeks, Potter & Co., Seabury & Johnson, and John- son & Johnson, American citizens, claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 35.
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REPLICATION ON BEHALF OF THE UNITED STATES.

I. In the answer of Venezuela in the above-entitled action it is asserted that the person making the claim before this tribunal does not possess the qualifications required by the protocol to enable him to come before the Commission in the capacity of a claimant.

It is not contended by the United States that Mr. Bance, the receiver in bankruptcy, is entitled to an award personally but only as the representative of the American creditors of Ernesto Capriles. We do not think that it is necessary to discuss this proposition further.

II. In the answer of Venezuela it is further asserted that the Commission lacks sufficient information to fix the pro rata which would belong to the American creditors so long as the proceedings in bankruptcy are pending.

In reply to this the United States presents herewith an affidavit of Mr. Bance, the receiver in bankruptcy, showing that a full and complete list of the creditors of Ernesto Capriles has been submitted to the Commission; that in the event of the payment of the treasury order for 200,000 bolivars more than sufficient funds will be realized to pay all of the creditors in full; that approximately 25 per cent has already been paid to these creditors, and showing accurately the exact amount still owing to the American creditors. We submit that this information is sufficient to enable the Commission to make an award for the benefit of these creditors, and that an award should be made in accordance with the amounts indicated.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

<p>THE UNITED STATES OF AMERICA ON BEHALF of J. B. Bance, receiver in bankruptcy of Ernesto Capriles, for the benefit of Weeks, Potter & Co., Seabury & Johnson, and John- son & Johnson, American citizens, claimants, v. THE REPUBLIC OF VENEZUELA.</p>	}	No. 35.
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DECISION.

Opinion by Doctor Paúl, Commissioner.

The Commission dismisses the claim for want of jurisdiction without prejudice to the claimant as representative of the creditors of Capriles in his capacity of receiver.

SEPTEMBER 22, 1903.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

<p>THE UNITED STATES OF AMERICA ON BEHALF of J. B. Bance, receiver in bankruptcy of Ernesto Capriles, for the benefit of Weeks, Potter & Co., Seabury & Johnson, and John- son & Johnson, American citizens, claimants, v. THE REPUBLIC OF VENEZUELA.</p>	}	No. 35.
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Doctor PAÚL, *Commissioner*.

Dr. J. B. Bance, as receiver in the bankruptcy of Ernesto Capriles, claims from the Government of Venezuela, on behalf of Weeks, Potter & Co., Seabury & Johnson, and Johnson & Johnson, American creditors of this bankruptcy, the sum of 15,576 bolivars, which is the proportionate amount corresponding to them in a credit of 200,000 bolivars held by Capriles against the Venezuelan Government, which credit is now judicially in the hands of the receiver for its collection.

The failure only deprives the bankrupt party of the administration of his property, which then goes to his creditors represented by the receiver, but in no way does it alter the essence of the property, rights, and actions, which continue to belong to the said bankrupt until an agreement is arrived at, and, failing this, until the final liquidation and adjudication of the property among the creditors in proportion to their claims and according to their rank as judicially classified.

Ernesto Capriles being a Venezuelan, all his property, rights, actions, and liabilities in the bankruptcy case are governed by the Venezuelan law and are subject to the procedure and decision of the tribunal under which the bankruptcy is investigated.

The receiver, representing the creditors, only acts as administrator of the property of the bankrupt party, and it is not possible to consider any individual credits from the total estate as the private property of any one creditor.

For the above-mentioned reasons the collection of a credit originally owned and still owned by a Venezuelan citizen can not be admitted before this Commission, and therefore this claim must be dismissed for want of jurisdiction, without prejudice to the claimant as representative of the creditors of Capriles, in his capacity of receiver.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

DECISION.

THE UNITED STATES OF AMERICA ON BEHALF of J. B. Bance, receiver in bankruptcy of Ernesto Capriles, for the benefit of Weeks, Potter & Co., Seabury & Johnson, and John- son & Johnson, American citizens, claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 35.
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The above-entitled claim is hereby dismissed for want of jurisdiction, without prejudice to the claimant as representative of the creditors of Capriles in his capacity of receiver.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered September 22, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George W. Upton, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 36.
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This claim was presented to the Commission on the memorial of the claimant, and was supported at the time of presentation by the agent of the United States in an oral argument. A brief was filed by the agent of Venezuela in answer and a brief was filed by the agent of the United States in replication.

[Translation.]

GEORGE W. UPTON }
 v. } Claim No. 36.
 VENEZUELA. }

ANSWER.*Honorable members of the Venezuelan-American Mixed Commission:*

The undersigned, agent of the Government of Venezuela, has studied the claim presented by George W. Upton, and respectfully shows to the tribunal:

The present claim is founded on six distinct points, that is to say:

(1) The claimant alleges that the Commission should decide that the contract which he has made with the Government of Venezuela for the clearing out and navigation of the river Tocuyo, is in full force and effect.

With respect to this first point of the demand, it ought to be observed that, as the interested party himself says, the Government of Venezuela up to the present date has always been disposed to recognize and has effectively recognized the obligations which arise out of said contract. There does not exist, therefore, any contention upon this point; it is clear that there is no right to claim. As to this point the Commission would lack authority to render a judgment in the manner indicated.

(2) The second point of the demand refers to an indemnity due on account of the launch *Protector*, which it is said was taken and rendered useless by Venezuelan authorities.

Concerning this point it is to be observed that the claimant has limited himself to proving the cost of the property lost, but in no manner proves the facts constituting the responsibility which might on account of them affect the Venezuelan Government, which ought to be established especially and minutely.

(3) The third point limits itself to the loss of the steel lighter which the claimant had in the harbor of Puerto Cabello, and which he alleges was taken away from him by the military authorities of said city in order that it might be used in the defense of that place in the year 1892.

Upon this subdivision of the claim the same observation as that concerning the second may be made. Besides, even in the case the fact be considered proved that the Venezuelan authorities have disposed of said lighter, it does not appear that the use which they made of it gave rise to its loss.

(4 and 5) The fourth and fifth points limit themselves to the loss of the steamer *Parupano*, the fixtures and tools which it contained, besides 575 sacks of coffee which were on board of it ready for transportation.

Concerning this point the claimant does not prove either the manner in which the above-mentioned steamer was lost, what people occasioned its loss, or if the coffee lost belonged to him by right or its value was afterwards claimed from him by the true owners. The declaration which in this respect is produced of Frederick E. Cavanaugh can have no weight as evidence since the affiant is interested in the claim.

(6) With reference to the sixth point arising out of the losses occasioned by the desertion of the colonists, it is entirely unjustifiable since

it attempts to recover from Venezuela damages suffered by foreign interests on account of the civil war, which in the first place caused his ruin. Concerning this point the undersigned ought to renew the arguments offered in prior analogous claims in order to prove that public law does not permit of an action on account of this sort of damages. In fact it is a principle that foreigners who settle in a country accept from that time all the eventualities to which said country is subject, amongst which should be included civil war. (See Fiore, *Public International Law*, par. 675, vol. 1, p. 583; Calvo's *Int. Law*, par. 363, Vol. I, p. 434; Pradier Fodéré, sec. 205, p. 343, Vol. I, *Int. Law*, and the notes of Count de Nesselrode of the 2d of May, 1850, and of Prince Schwartzemberg of April 14, 1850.)

For the reasons given the claim should be disallowed in all its parts.
Caracas, July 25, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission, organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George W. Upton, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 36.
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REPLICATION ON BEHALF OF THE UNITED STATES.

In the answer of Venezuela in the above-entitled matter objection is made to the insufficiency of the proof in support of the claim of Mr. Upton for the loss of the launch *Protector* and of the hull of the steel lighter, which were his personal property, at Puerto Cabello.

I.

The loss of the launch *Protector* occurred in March, 1900, when the Government of Venezuela, acting through Gen. Federico C. Escarrá, took possession of the launch for the purpose of transporting it on flat cars to the Lake of Valencia, where it was to be armed as a gunboat to destroy a steamer in possession of the revolutionists. While attempting to lift the launch on to flat cars at Puerto Cabello its keel was broken and its sides crushed in, so that it became absolutely useless. Thereupon General Escarrá advised the representative of the claimant that the Government could not use the launch and placed it at the disposal of its owner.

On May 5, 1900, a payment of 320 bolivars was made to the representative of the claimant by the Government to cover the expense of removing the launch to a safe place, where it has remained useless ever since. A further payment of 160 bolivars was made on May 16, 1900, to the representative of Mr. Upton, on account.

In support of this item of the claim the correspondence between the representatives of Mr. Upton and General Escarrá is herewith submitted.

II.

The facts regarding the loss of the lighter are that the Government of Venezuela, acting through Gen. Daniel S. Valero, in the month of August, 1902, took possession of the lighter, which was stored in the yard of the Electric Light Company at Puerto Cabello, caused it to be filled with bags of sand, and then made use of it as a barricade against the revolutionists. A protest was made by the representative of Mr. Upton against such use of the lighter, but, notwithstanding the protest, it was used as a defense and was destroyed. The hull was burst and the decks broken, so that it became absolutely valueless. The representative of Mr. Upton thereupon instituted proceedings before the court of first instance of the second judicial district in Puerto Cabello to establish the amount of injury done to the lighter. A copy of the proceedings before this court are herewith submitted in evidence, and they prove conclusively that the damage was occasioned in the manner stated and that the lighter was rendered absolutely useless.

III.

In regard to the loss of the steamer *Parupano* and the 575 sacks of coffee, we submit that the affidavit of Mr. Cavanaugh, in the absence of any proof to the contrary, is sufficient to establish the loss.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George W. Upton, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 36.
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DECISION AND AWARD.

Opinion by Bainbridge, Commissioner.

The Commission awards to the claimant the sum of \$5,376.25, United States gold.

SEPTEMBER 25, 1903.

The United States and Venezuelan Claims Commission. sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George W. Upton, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 36.
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BAINBRIDGE, *Commissioner:*

On December 23, 1892, the Government of Venezuela granted a concession to José Trinidad Madriz for the "canalización y navegación por vapores calado del Río Tocuyo," and on the day following Madriz

assigned said contract and concession to José Rafael Ricart. On May 1, 1897, the claimant herein, a native citizen of the United States, bought from Ricart, previously authorized by the Government to make the transfer, said concession and all rights and privileges connected therewith and granted thereby. It is alleged that all the foregoing instruments were duly recorded as provided by law.

The claimant avers that the concession referred to is of great value, to wit, more than one million dollars; and that if in the future, by reason of insurrection or other cause, the Government of Venezuela shall violate the terms of said contract, or revoke it in fact or by obstruction to its operation, he would be damaged in that sum. He states, however, that he has heretofore ever found the Government inclined to recognize and in fact recognizing its obligations under and the validity of said contract. He alleges that he has fully complied with all the terms, conditions, and requirements of the concession on his part.

He asks as a preliminary item of his claim that this Commission shall establish as of record for the future the fact and decision confirming the acts of memorialist and directing the Government of Venezuela to make acknowledgment upon its official records of his compliance with the terms of the contract.

In regard to this item of the claim, it is sufficient to state that the Commission has no jurisdiction to grant the relief asked. It is clearly not a "claim" within the meaning and intent of the protocol of February 17, 1903, constituting this Commission.

The remaining items of the claims are enumerated as follows:

(a) Loss of the launch <i>Protector</i>	\$3, 500. 00
(b) Loss of steel lighter	4, 002. 25
(c) Loss of steamer <i>Parupano</i>	8, 714. 75
(d) Loss of 575 sacks of coffee and all chattels at El Salto de Diablo	10, 015. 00
(e) Loss of money by expulsion of colonists	3, 988. 43
	<hr/>
	30, 220. 43

(a) The steam launch *Protector* was bought by the claimant for his use in making trips from Puerto Cabello to the Tocuyo River and along the coast, and had been thus used for a year or more. The boat was 40 feet long, 8½ feet beam, and 3½ feet draft. In 1900, while the claimant was in the United States, certain revolutionists armed and equipped a steamer on Lake Valencia and used her to molest the Government, whereupon Gen. Federico Escarrá, administrator of the maritime customs at Puerto Cabello, seized the *Protector*, against the protest of claimant's agent, for the purpose of putting her on flat cars on the English railroad to take her to Lake Valencia, where, armed with Government guns and troops, she was to be used against the steamer of the revolutionary party. In transporting the launch to the railway she was so badly damaged by careless or inefficient handling as to be rendered totally useless. Claimant alleges that she could not be repaired at Puerto Cabello, and that although he has diligently endeavored to do so, he has been unable to sell the boat or any part thereof, and he claims for her destruction the sum of \$3,500.

It appears from the evidence that the Government paid the expenses of removing the launch from the streets of Puerto Cabello to a vacant lot where, it is alleged, the boat has remained absolutely useless ever since.

The seizure of the launch may have been justified by the necessities of the state, but it was a taking of private property for public use and involved the obligation of just compensation to the owner. The evidence is sufficient as to the fact of the taking of the boat, and that as a result thereof it was rendered useless. But as the launch appears to have some value, and as it still remains the property of the claimant, an award of \$3,000, with interest thereon at 3 per cent per annum from October 15, 1900, to December 31, 1903, is hereby made as compensation for the loss or damage sustained by the claimant upon this item.

(b) The claimant states that he is the owner of a duplicate steel hull with boiler, intended for a flat-bottomed stern-wheel steamer or for use as a lighter, which was in 1902 mounted on blocks and covered in the yard of the Electric Light Company at Puerto Cabello. In July of that year the military authorities of the Government, in order to resist an attack by revolutionists upon the city, constructed a line of barricades, and finding the said hull near the line of defense filled it with, and piled thereon and about it, stones, rocks, and sand of great weight. It was discovered later that the weight thus put upon it greatly damaged the hull, and, upon complaint of the agent of the claimant, the stones, sand bags, etc., were removed by the Venezuelan authorities. Memorialist asserts that said hull was rendered useless, and that without it the boiler is a complete loss, and he asks an award in the sum of \$4,002.25.

The evidence of various parties cognizant of the facts is presented showing the condition of the hull prior to its being used in the manner and for the purpose above described and the injury sustained, the witnesses stating that the hull was rendered useless for the purpose for which it was intended and that the repairs will cost as much as to build a new one.

The same principle is applicable here as in the foregoing item. The right of the state, under the stress of necessity, to appropriate private property for public use is unquestioned, but always with the corresponding obligation to make just compensation to the owner thereof. It is believed, however, from all the evidence here presented, that the sum of \$2,000, with interest thereon at 3 per cent per annum from July 15, 1902, to December 31, 1903, will fully compensate Mr. Upton for whatever loss or damage he has sustained on this item of his claim.

As to the remaining items of this claim, it is evident from the claimant's own statement that the losses set forth in his memorial arose from the disturbed condition of the country, due to the civil war then existing in Venezuela, and not from any acts of the Venezuelan Government or its agents specially directed against the claimant or his property. Under these circumstances the claimant's privileges and immunities were not different from those of other inhabitants of the country. He must be held, in going into a foreign country, to have voluntarily assumed the risks as well as the advantages of his residence there. Neither claimant nor his property can be exempted from the evils incident to a state of war to which all other persons and property within the same territory were exposed. As to these items, therefore, the claim must be disallowed.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of the United States of America, on behalf of George W. Upton, against the Republic of Venezuela, No. 36, the sum of five thousand three hundred seventy-six and 25/100 dollars (\$5,376.25), United States gold, is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America, in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered September 25, 1902.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Mauricio Berrizbetia, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 37.
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This claim was presented to the Commission on the memorial of the claimant and was supported at the time of presentation by the agent of the United States in an oral argument. A brief was filed by the agent of Venezuela in answer and a brief was filed by the agent of the United States in replication. The claim was subsequently withdrawn.

[Translation.]

MAURICIO BERRIZBETIA v. VENEZUELA.	}	Claim No. 37.
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ANSWER.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of Venezuela, has studied the claim of Mauricio Berrizbetia, and respectfully shows to the Commission:

The facts upon which the claim of the said Berrizbetia is founded

appear to be proved by means of a deposition taken without notice to the party against whom it operates. It is to be noted that amongst the items which make up the claim there is one marked No. 8, which can by no means be allowed. In fine, it arises out of the value of a horse which was taken away from the claimant by revolutionary forces and afterwards secured by those of the Government under the command of Colonel Moros. In order that the responsibility of the Government might have been established, it would be necessary to furnish proof that the commander of said forces knew the proprietor and that notwithstanding his remonstrances refused to return the animal to him; this proof does not exist.

As to the other values reclaimed they have been estimated arbitrarily by the interested party himself.

The Commission, in the spirit of equity which distinguishes its honorable members, will decide concerning this claim, presented in circumstances adverse to Venezuela, by an individual who calls himself an American citizen because he was accidentally born in New York, and who is the son of Venezuelan parents, having his interests in Venezuela and habitually residing therein.

Caracas, July 24, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Mauricio Berrizbetia, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 37.
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REPLICATION ON BEHALF OF THE UNITED STATES.

I.

In the answer of Venezuela in the above-entitled matter, the only substantial objection raised to the claim for damages and property taken is in regard to the eighth item, which consists in a claim amounting to 200 bolivars, for the value of a horse taken from the claimant last February by the revolutionary forces under Guigue, from whom it was in turn taken by Col. Marco Antonio Morros commanding the forces of the regular government. It is contended that, in order to place responsibility upon the Government of Venezuela, the claimant should have made known to the officer commanding the regular forces that he was the owner of the horse and should have demanded the return of the animal to him.

It may be that the claimant did not take the course suggested, although such can hardly be presumed, but whether he did or did not make a claim at the time the horse was taken for its return or for its value, he has now made the necessary demand on the Government of Venezuela in his memorial presented to this Commission, and he is entitled either to have the horse returned to him with suitable compensation for its use or to have its value.

The answer of Venezuela says:

The Commission, in the spirit of equity which distinguishes its honorable members, will decide concerning this claim, presented in circumstances adverse to Venezuela, by an individual who calls himself an American citizen because he was accidentally born in New York, and who is the son of Venezuelan parents, having his interests in Venezuela and habitually residing therein.

While this does not directly challenge the citizenship of the claimant we consider it desirable to discuss this point and to call the attention of the Commission to the facts of the claim in this particular and to the law of Venezuela.

The claimant was born in New York in 1861, as is evidenced by the baptismal certificate heretofore filed with the Commission. The claimant filed this certificate in the United States consulate at Puerto Cabello, and it constitutes a part of the consular records as appears by the certificate of W. H. Volkmar, the vice-consul at that place. From this act of the claimant in recording this instrument it is apparent that he desired to establish his status as a citizen of the United States. As to the question of citizenship, viewed from the standpoint of Venezuelan law, we refer to articles 15 and 16 of the código civil, which read as follows:

Art. 15. Las personas son venezolanas ó extranjeras.

Art. 16. Son venezolanos los que la constitución de la República declara tales.

The constitution of the Republic declares in Title III, section 1, article 8:

Art. 8°. Los venezolanos lo son por nacimiento ó por naturalización.

(a) Son venezolanos por nacimiento: * * *

2. Los hijos de padre ó madre venezolanos por nacimiento que nazcan en el extranjero, siempre que al venir al país se domicilien en él y declaren ante la autoridad competente la voluntad de serlo.

Also article 9:

Art. 9°. La manifestación de voluntad de ser venezolano debe hacerse ante el registrador principal del Estado en que el manifestante establezca su domicilio, y aquél, al recibirla, la estenderá en el protocolo respectivo, y enviará copia de ella, al Ejecutivo Federal para su publicación en la Gaceta Oficial.

The claimant has not taken the course prescribed by law to become a citizen of Venezuela, but, on the contrary, has clearly manifested his intention of remaining a citizen of the United States by his act of registration in the United States consulate above set forth.

We submit that an award should be made for the full amount claimed. Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Mauricio Berrizbetia, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 37.
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YOUR HONORS: I am just in receipt of a letter from the legation of the United States in this city stating that Mr. Mauricio Berrizbetia has withdrawn the claim which has been presented to this honorable

Commission by the United States of America on his behalf, and instructing me to take formal action for its withdrawal. In consequence, I hereby formally withdraw claim No. 37 from the further consideration of the Commission.

Very respectfully,

ROBERT C. MORRIS,
Agent of the United States.

CARACAS, VENEZUELA, *August 22, 1903.*

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Virgilio del Genovese, claimant,	} No. 38.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

BRIEF ON BEHALF OF THE UNITED STATES.

This claim primarily arises from a breach of a contract entered into between the beneficial claimant, Genovese, and the respondent Government, on the 26th of January, A. D. 1897, for the construction of certain public works in the city of Caracas. The claimant entered upon the construction of the prescribed work, and, with the exception of a number of enforced delays, brought about contrary to the terms and spirit of the contract by the respondent, prosecuted the same diligently until the 27th day of June, A. D. 1903, when, because of the long-continued breach of the obligations of the contract on the part of Venezuela in the neglect and refusal to pay to Genovese sums long overdue for work completed and accepted, the latter, worn out with the apparently hopeless struggle against adverse situations, broken in health, and ruined in credit, notified the minister of public works of his determination to discontinue further work. He having elected to consider the contract broken for the long-continued failure on the part of Venezuela to pay sums unquestionably due, the United States presents and urges before this high Commission Genovese's claim:

(1) For compensation for the damages wrought upon him by such failure.

(2) In addition to the claim for damages arising from the express terms of the contract itself, the United States also presents on Genovese's behalf a claim for incidental damages growing out of the wrongful manner in which the officials of the respondent interfered with him and delayed the prosecution of his work; and also

(3) For the forcible taking and carrying from him of certain mules and other property, and the personal indignities to which he was subject in connection therewith.

CLAIM NO. 1.

Article 3 of the contract (p. 5) provides that there shall be paid to the contractor, Genovese, the sum of 413,352.99 bolivars for the performance of the work therein specified, divided as follows:

	Bolivars.
For section 1 of the work.....	133, 494. 05
For section 2 of the work.....	86, 630. 00
For section 3 of the work.....	203, 358. 61

Article 5 of the contract provides (p. 6) that—

the payment for each of said sections shall be made in weekly quotas, the delivery of which to the contractor shall begin when the section treated of shall have been accepted by this department, the office of which shall determine the amount of each of the said weekly quotas. The progress of the work shall be regulated by this department in such manner that the second section shall be executed whilst the payment for the first is being effected, and the third whilst the payment for the second continues, but the payment for no section shall begin until the preceding shall have been liquidated.

The first section of the work was completed by the contractor in accordance with the provisions of the contract as modified by the executive decree of December 22, 1897 (Exhibit B), and was subsequently accepted by the department of public works. The contractor then proceeded with the work on section 2 and completed the same, notwithstanding the failure on the part of the Government of Venezuela to make the weekly payments as agreed. Although the second section was completed and the department of public works notified of that fact June 19, 1900 (Exhibit C), the officials of that department arbitrarily delayed the inspection and official acceptance thereof until the 3d day of September of that year, when Genovese, acting upon verbal authority, began the construction of the third section (Exhibit C), which now lacks but 1,000 cubic meters of completion, at an estimated cost of 4,000 bolivars at the time Genovese elected to discontinue the work.

By article 9 of the contract the Government reserved to itself the right to modify the plans of the work upon the payment of the differences which resulted from such modifications "calculated at the unit prices established in the sheet of conditions" (p. 6).

After the commencement of the work the Government altered the plans by lengthening the culverts on sections 1 and 2 from 73 linear meters to 80 linear meters, and they were so constructed, the difference in favor of the contractor calculated at the unit prices established in the sheet of conditions amounting to 32,370.53 bolivars.

The total amount, therefore, due Genovese for work done under the express terms of the contract was 451,853.09 bolivars, which is reduced by payments on account, as per statement (Exhibit D), amounting to 61,420 bolivars—leaving a balance due on principal account of 390,433.09 bolivars.

Interest.—On account of the wrongful withholding of the various sums due to the contractor for work completed, the United States claims on his behalf by way of damages interest at the rate of 3 per cent per annum, amounting in the whole to 421,509.50 bolivars—the total amount of principal and interest so claimed to be due and affording a basis of award in claimant's favor being 411,942.59 bolivars, or approximately \$82,388.51.

CLAIM NO. 2.

During the prosecution of the work, the contractor was wrongfully subjected to many annoyances, harassments and delays by the arbitrary actions and orders of the officials of the department of public works, the arbitrary delays amounting to the loss of 1,049 days' time both for the contractor himself and his teams and plant, and imposing upon the contractor an improper and unanticipated expense for maintenance. It is asserted that such loss, as nearly as it can be estimated, amounts to about 250 bolivars or \$50 a day, made up by allowing 100

bolivars or \$20 a day for the time of the contractor himself and 150 bolivars or \$30 a day for the expense of caring for and maintaining his plant, including the stabling and feeding of his horses and mules and the wages of their necessary attendants. On such account, damages to the amount of 262,250 bolivars or \$52,450 are claimed.

CLAIM NO. 3.

By Exhibits G and G¹, being sworn statements of the persons whose names are signed thereto, it appears that Genovese, on or about March 3, 1903, having sought to find use for his own time and that of his unemployed beasts of burden, went to the village of Guarenas, within a few hours' travel of Caracas, for the purpose of bringing in certain sacks of coffee. On his return to Caracas he was twice held up by bands of armed men who pointed their rifles at him and by threats of death compelled him, despite his protestations and his assertion of his American nationality, to surrender to them two mules and his overcoat.

From the receipt given to him by the commander of the first set of armed men, it would appear that these despoilers were in the service of the so-called "Revolucion-Libertadora," but even so the obligation to protect persons in the same situation with Genovese was upon the established government and the failure on its part either to protect the person and property of Genovese or to apprehend his despoilers renders such government liable to respond in substantial damages. (Halleck, Int. Law., Ch. XI, sec. 4; Vattel, Droit des Gens Lib. II, Ch. III, sec. 38; Phillimore, Int. Law, Vol. I, sec. 168; Dana's Wheaton, sec. 23; cited in Moore Int. Arb., vol. 2, p. 1716, note.)

The concise statement of the facts pertaining to this claim seems to be sufficient of itself to establish claimant's right to recover and the respondent's corresponding liability to pay.

There would seem to be no question of jurisdiction or disputed law involved. It is accordingly respectfully submitted without more.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

[Translation.]

VIRGILIO DEL GENOVESE }
v. } No. 38.
VENEZUELA. }

ANSWER.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of Venezuela, has studied the claim presented by the American citizen, Virgilio del Genovese, and respectfully informs this tribunal:

As is seen from the report adjoined, made at the instance of the undersigned by the office of the minister of public works, Mr. Virgilio del Genovese had made a contract with the Government, under date of January 26, 1897, for the completion of certain works in the city of Caracas. The total value of the work contracted for is stipulated at the sum of 413,352.99 bolivars, and it was agreed to divide the work into three sections called first, second, and third. The first ought to have been paid for after its completion in monthly installments; the work on the second should have been performed during the

payment for the first; and that of the third during the payment of the second; but it was an express condition that no section should be paid for, and therefore should not be commenced, unless the preceding one had been liquidated. No doubt the Government in establishing such a *modus operandi* had in mind the economic difficulties by which it was surrounded, and provided for the possibility of the extinction of the funds destined for the work, in order not to remain the debtor of the contractor.

Genovese began the work and completed two sections; the first was accepted by the Government and its payment begun; but the foreseen circumstance having arrived, it determined not to accept the second so long as the contractor had not been paid; proceeding thus in accord with the contract. Notwithstanding that this last-mentioned individual well knew the difficult situation of the treasury and that he had promised to take it into consideration, he hastened to commence the third section, the second not having been received nor the first finally paid for. In passing it must be observed that the Government was the only one authorized by the contract to fix the time for the conclusion of the work. As a prerequisite to accepting the second section, a report was made by engineers from which it appeared that the work was not in conformity with the general plan, on account of which, the ministry suspended the payments. As is seen, therefore, there has not been on the part of the Government anything except a strict execution of the agreement, and on this account a claim for damages can not be sustained.

Concerning the rest of the claim, the work is done and the tribunal can order that it be valued by experts; the Government will pay according to the estimate made concerning them.

With reference to the second part of the claim it appears that the damages suffered by Genovese were done him by revolutionary parties. The endeavor which the Government made to put down the anarchistic movement is well known, and no charge on account of negligence can justifiably be made. On the contrary, all the responsibility for what happened falls on the claimant himself, who could not be ignorant that a portion of the State of Bolivar was in the power of the revolutionists, and took the risk of going to Guarenas, counting no doubt upon the profits which the perilous expedition would render him.

That part of the claim ought to be disallowed.

Caracas, July 26, 1903.

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Virgilio del Genovese, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 38.
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DECISION AND AWARD.

Opinion by Doctor Paúl, Commissioner.

The Commission awards to the claimant the sum of \$70,083.28,
United States gold.

OCTOBER 2, 1903.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF
of Virgilio del Genovese, claimant,
v.
THE REPUBLIC OF VENEZUELA. } No. 38.

Doctor PAÚL, *Commissioner*:

This claim is based on a breach of a contract entered into by Virgilio del Genovese, the claimant herein, and the Government of Venezuela, through its department of public works, on the 26th day of January, 1897, for the extension of West Ninth street, in this city.

The various items of the claim are as follows:

First. Balance due, under contract, on account of sections 1 and 2, completed and accepted, as per statement of director of the bureau of roads, etc., April 11, 1903.....	Bs. 158, 704. 05
Second. Extra stonework and filling on sections 1 and 2 made necessary by increased length of culverts	32, 370. 53
Third. For work done to date of this claim (June 29, 1903) on section 3 which has not been fully completed because of failure on the part of the Government of Venezuela to make payments for completed works, as agreed, as follows:	
Total amount agreed to be paid on account of said section, as per article 3 of the contract....	Bs. 203, 358. 51
Less amount necessary to complete unfinished portion of the work	4, 000. 00
	199, 358. 51
Fourth. Damages for delays due to arbitrary stoppages of the work by Venezuelan authorities (1,049 days at 250 bolivars per day)....	262, 250. 00
Fifth. Damages for indignities suffered and loss of mules, etc., March 2, 1903.....	25, 000. 00
Sixth. Interest for payments in arrears at 6 per cent per annum, as follows:	
Section 1, balance due under contract but not including extra work, 73,074.05 bolivars, from March 20, 1898, to date, in round numbers.....	Bs. 21, 600
Section 2, balance due under contract not not including extra work, 86,630 bolivars, due since June 19, 1900, three years, in round numbers....	15, 593
Sections 1 and 2, extra work done and accepted by Government, amounting to 32,370.53 bolivars....	5, 826
	43, 019. 00
Grand total.....	720, 702. 09

From the examination of the documents joined to this claim and by the papers mentioned by the department of public works in its report referred to by the honorable agent for Venezuela in his reply, made before this Commission, the following facts appear proved:

That the Government of Venezuela on January 26, 1897, through the department of public works, made a contract with Mr. Virgilio del Genovese, for the extension of West Ninth street of this city. By article 2 of said contract Del Genovese bound himself to begin the work on the construction of the culvert of the stream "Les Tinajetas" and its filling, that upon completion of this work he was to begin the construction of the culvert of the stream "El Tajamar" and its filling, and this second part of the work completed to begin that of the stream "Los Padrones" and its filling.

Article 3 of the same contract stipulated the total value of the work

to be executed by Del Genovese in the sum of 423,482.62 bolivars, distributed in the following way:

	Bolivars.
First section	133,494.06
Second section	86,630.00
Third section	203,358.57

Article 5 stipulated that on the completion of each section the contractor should notify the department of public works so as to obtain the acceptance; that the payment of each one of the sections was to be made by weekly installments, to begin when the completed section has been received by said department, the office of which should determine the amount of each weekly installment. The progress of the work was to be regulated by the department of public works in such manner that the second section was to be constructed at the same time the payments for the first were being made, and the third section during the payments of the second, but the payment for no section should have begun until the preceding had been liquidated. The payment for the third section to be made in a period proportionate to that of the two former in relation to their respective estimates.

Article 8 stipulates that the work was to be inspected by an engineer appointed by the department of public works, and no trenches for foundations were to be filled in without the order of said employee.

Article 9 provided that the Government reserved to itself the right to modify the plans and other conditions of the work, and the differences which such modification could have produced in relation to the estimate should be calculated at the prices established in the sheet of conditions.

By article 10 the Government of Venezuela allowed Mr. del Genovese the importation free of custom duties of the machines and tools required for the construction of the work, and also granted to him the exoneration of one-half of the dues of the breakwater pier at La Guayra, and one-half of the freight on the La Guayra and Caracas Railway for the said machinery and tools, and for the cement to be used in said work.

From the information asked by the director of the section of roads and aqueducts of the department of public works, on the 11th of April of this year, it appears that the Government of Venezuela owes to Virgilio del Genovese the sum of 158,704.05 bolivars, balance of the the price of the work executed for the extension of West Ninth street of this city, with specification of the price of the sections completed and delivered according to the contract, and of the sums received by Del Genovese on account of section 1, as per the orders of payment issued in his favor by the department of public works on the national treasury and personal payments made to Del Genovese by the said department.

Mr. Del Genovese found correct the liquidation made by the department of public works of the balance due him for the price of the two sections, first and second, completed and delivered. On August 6, 1900, Mr. Del Genovese addressed to the secretary of public works a note, a copy of which has been presented, in the following terms:

CARACAS, August 6, 1900.

CITIZEN MINISTER OF PUBLIC WORKS,

Present:

I have the honor to address myself to you in order to advice you that, having completed, since the 19th of June of the current year, the work of the second section,

according to the provisions of the contract which I celebrated with the Government of the Republic, I complied with the duty of communicating same to that department, begging that it should proceed, as was natural and just, to accept the work, but up to date this has not been done in spite of all my exertions, verbally and in writing, for that end.

As it is now forty-eight days since said work was completed, without its having been accepted officially, which causes me serious material damages and moral uneasiness, I find myself in the indispensable and unavoidable position of requesting once more that you will be pleased to order whatever may be necessary for the official delivery of said work at the earliest possible moment.

I take the liberty of submitting to you that if the consideration that, in accordance with the provisions of the contract, the value of the first section should be paid to me on the delivery of the second, this consideration ought no longer to delay the said acceptance, because my previous conduct may serve you as a guaranty that I shall know how to appreciate the difficult situation of the Government, and that I shall lend myself gladly to a just and equitable arrangement for the purposes of said payment, since my greatest desire is to begin the work on the third section in order to comply with that which I have bound myself in said contract, and that the honor may be mine that this Government, who has given so many proofs of honesty, of progressive spirit, and of the desire to protect the honest and industrious people, and for which I have so much sympathy, may continue satisfied with me.

It is not beside the point to indicate to you that, according to the weekly reports which I have furnished to your department, I have given work daily to some forty laborers who are waiting for me to begin the third section, in order to once more have an occupation and bread for themselves and their families.

Confident that all which I have submitted will determine your department to accede to my just request, believe me,

Your obedient servant.

(Signed)

VIRGILIO DEL GENOVESE.

It can be seen by the terms of this letter, the contractor considered, in accordance with the contract, an obstacle for the acceptance of the second section of the work by the department of public works, the fact that the first section not having been paid for and by his own request the said department consented, as it appears from the documents presented, to receive said second section, continuing the periodical payments to Del Genovese during the remainder of 1900, 1901, and 1902, to the amount of 21,600 bolivars for the first section, as shown by the liquidated account.

It has not been proved that there had been a breach of contract on the part of Venezuela, as the delay in the payment of the weekly installments that should have been made to Del Genovese for the price of the two sections completed and delivered, were tolerated by him, and, as it has already been stated, he said to the Government that the delay should not be a cause to stop the acceptance of the second section of the work, his past conduct being a guarantee that he knew how to appreciate the economical difficulties of the Government, and that he would gladly accept a just and equitable arrangement for the payment of said delayed installments.

The circumstance that the contractor addressed again to the Government of Venezuela a letter dated March 20, of the current year, acknowledging that the work on the third section had been suspended for two years on account of the political state of the country, and that he was ready to resume said work, evidently proves that he was willing to suspend said work without being justified to make the Government of Venezuela responsible for a breach of contract, which he now pretends to establish.

Regarding the balance due to Virgilio Del Genovese by the Venezuelan Government for the price of the first section and the whole price of the second section, amounting to the sum of 158,704.05 bolivars, it

appears, as shown in an account furnished to Mr. del Genovese, under date of April 11, 1903, by the director of the bureau of roads, etc., in the department of public works, that the Government of Venezuela admitted to be due to the claimant the said sum of 158,704.05 bolivars to that date.

From the evidence presented by the memorialist, it is proven that some extra work in the sum of 32,370.53 bolivars, specified in the affidavit sworn to by the civil engineer, J. Duch, executed by the contractor at the unit price specified in the sheet of conditions, really amounts to that sum and must be allowed.

From the documentary evidence presented by the claimant, and also from the other documents recorded in the department of public works, which has been put at the disposal of this Commission for its examination, it is apparent that said department of public works was informed by Del Genovese several times that he had prosecuted the work in its third section, and specially in his note of March 16, 1903, he informed the secretary of public works that on that date the work on the third section had been resumed. There exists in the record some orders from the secretary of public works, authorizing Del Genovese to introduce free of duties a number of barrels of cement to be employed in the execution of the third section of the extension of west Ninth street. The memorialist admits that some work remains yet to be done for the conclusion of the third section, which he appreciates, in conformity with the opinion of two contractors of public work, named José Rodríguez and Daniel Martínez Poleo, could be done for the sum of 4,000 bolivars.

This Commission, desiring to obtain all the necessary information about the value of the work that remained to be done for the completion of the third section, asked and obtained the learned opinion of Dr. Carlos Monagas, a Venezuelan engineer. After having taken in consideration that opinion and the careful examination of all the evidence presented by both parties, the Commission arrives at the conclusion that the sum of 30,000 bolivars must be deducted from the amount of 203,358.51 bolivars to be paid for said third section, as per article 3 of the contract.

The damages claimed for the stoppages of the work, amounting to the sum of 262,250 bolivars, and the interest at 6 per cent per annum on the balance due for the price of the first and second sections, which the claimant puts forth for 43,019 bolivars, must be disallowed, because the stoppage of the work has not been caused by arbitrary action of the Government of Venezuela, but by the natural consequences of the civil war, which were admitted by the same contractor as justified, as it appears from his correspondence with the department of public works.

The damages for indignities suffered and for loss of mules, etc., on March 2, 1903, amounting to 25,000 bolivars, can not be taken into consideration, as the fact on which this part of the claim is founded appears to consist in an act of highway robbery that can not effect the responsibility of the Government of Venezuela.

For the aforesaid reasons an award is made in favor of Mr. Virgilio del Genovese for the sum of \$70,083.28 United States gold, without interest.

The United States and Venezuelan Claims Commission sitting at
Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of Virgilio del Genovese, claimant, against the Republic of Venezuela, No. 38, the sum of seventy thousand eighty-three and 28/100 dollars (\$70,083.28) in United States gold is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,

Commissioner of the part of the United States of America.

J. DE J. PAÚL,

Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

RUDOLF DOLGE,

Secretary on the part of the United States of America.

J. PADRON UZTARIZ,

Secretary on the part of Venezuela.

Delivered October 2, 1903.

Before the Mixed Commission, organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of The La Guayra Electric Light and Power Company, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 39.
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This claim was presented to the Commission on the memorial of the claimant, and was supported at the time of presentation by the agent of the United States in an oral argument. A brief was filed by the agent of Venezuela in answer and a brief was filed by the agent of the United States in replication.

[Translation.]

THE LA GUAYRA ELECTRIC LIGHT AND POWER Company v. VENEZUELA.	}	No. 39.
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ANSWER.

Honorable Members of the Mixed Venezuelan-American Commission:

The undersigned, agent of the Government of Venezuela, has studied the claim presented by the La Guayra Electric Light and Power Company, and respectfully informs this tribunal:

The present claim is from every standpoint unjustifiable. In none of the facts upon which the claim is alleged to be based, has there been produced a serious or convincing proof, since the affirmation of the interested parties themselves can not be considered as such. From the name itself of the company claimant it appears that it is a corporation; consequently, the first proof that ought to have been produced is that all of its directors are American citizens; otherwise citizens of other countries could present themselves before this Commission which would be contrary to the convention which created it. Now, then, amongst such directors there figures one by the name of Juan B. Garcia, who, born in Venezuelan territory, naturalized in the United States, as is evidenced by the documents, has returned to his native country. The doctrine sustained by the United States in cases like the present is well known, when naturalized citizens claim its intervention against the country of their origin; the American Government has always refused such intervention. (See Fiore, *Int. Nat. Law*, vol. 1, paragraph 655, p. 567. See also the case of Myer, *Congressional Documents*, 1852, No. 38.)

The actual practice about naturalization may be condensed thus: So long as the naturalized person resides within the jurisdictional limits of his adopted country, or in any other country, he enjoys entirely the benefits which the nationality that has been conferred upon him concedes; upon returning to his native country he comes under the territorial jurisdiction which may demand the performance of obligations by him from which he escaped by emigration. (See Calvo, *Int. Law*, Vol. II, Book 10.)

The second proof that ought to have been produced is that all the stockholders are also American citizens. This proof also is lacking.

It is worthy of note, to say the least, that the claimants have not been able to establish the proof of one of the many facts upon which the claim is founded.

On the other hand, the company has taken good care to keep silence concerning the amount of its invested capital, because this would be a mode of determining the proportion between the enormous amount of damages claimed and the interests which are alleged to have been injured.

With respect to the sums of money which the claimant says are owed by the municipality of La Guayra, this is a matter which ought to be settled with it. Municipalities are juridic autonomous persons, capable of contracting rights and obligations. The State can not be responsible for them.

The claim ought to be disallowed because it is manifestly unfounded and venturesome.

Caracas, July 26, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the La Guayra Electric Light and Power Company, claimant,	} No. 39.
v.	
THE REPUBLIC OF VENEZUELA	

REPLICATION ON BEHALF OF THE UNITED STATES.

In this case the United States has presented a claim on behalf of the La Guayra Electric Light and Power Company, a corporation created and existing under and by virtue of the laws of the State of West Virginia, United States of America, for damages to its concessionary rights and to its plant, due to acts of the Venezuelan authorities and for amounts due under contracts with the National Government of Venezuela, the Federal district, and the municipalities of La Guayra and Maiquitia.

On the 19th of October, 1893, the municipal council of the district of Vargas granted a concession to Luis J. Garcia Monjui, a resident of the city of La Guayra, for the erection of an electric light and power plant to supply the city of La Guayra and other places designated, by which the municipality agreed to pay a certain sum daily for the service of light. The concessionary then transferred his contract to Juan B. Monjui and Arturo G. Monjui, who agreed to organize a company with a capital of \$250,000 and pay him 45 per cent of its capital stock, which would amount to \$112,500 par value. This company was organized, as agreed, on the 17th of October, 1895, under the laws of West Virginia, having its principal place of business in the city of New York. The Government of Venezuela was duly notified of the formation of the company and a copy of its charter was filed in Caracas. The company then proceeded to erect and operate its plant in accordance with the terms of the concession. For a period of eighteen months the company rendered the required service and received payment from the municipality for about twelve months. The municipality then defaulted in its payment, and by action of the municipal council proceeded to annul the concession. On the same day that the concession was annulled a similar concession was granted to F. Martinez Espino & Co. A protest was thereupon filed by the company with the United States legation at Caracas against the action of the municipal council.

In January, 1900, at a session of the court of first instance, civil and mercantile, of Caracas, an agreement of settlement between the company and F. Martinez Espino & Co. was reached, by which the latter transferred all the rights they claimed to the company in consideration of 5 per cent of its preferred stock to be issued. The original concession was also, by order of the court, reestablished and extended. The company then recommenced operations and began to build a plant of increased capacity, expending upward of \$50,000 in the work. The municipal authorities of La Guayra then undertook to ruin the business of the company by having the wires and poles cut, by destroying the lamps, and disabling the machinery. These depredations continued for a period of four or five months, as appears by the affidavit of Mr.

Juan B. Garcia, who was the general manager of the company. Not content with these malicious and wrongful acts, the municipal council arbitrarily placed under arrest the employees of the company without any accusation against them.

In 1901 the municipal council again annulled the concession of the company, on the grounds that the company had not completed the work required within the time specified under article 5 of the contract and proceeded to grant a new concession to Messrs. Perez and Morales. The company protested against this action of the municipal council and showed by testimony taken before the circuit court in Caracas that the delay of the company in the completion of its work was due to civil war and the result of a severe earthquake. Under article 5 of the contract provision was made to cover all delays caused by superior force, and it was evident that the company was carrying on the work strictly in accordance with its agreement. The matter was then brought to the attention of the United States legation at Caracas, as appears by the letter of the United States minister to the President of the Republic of Venezuela, dated January 30, 1901.

An alternative proposition is advanced in the memorial of the claimant by which it is indicated that the reinstatement of the concession will be accepted by the company for a part of the claim. But such adjustment can not be arranged by this honorable tribunal, as it does not come within its jurisdiction and should be the subject of negotiations between the company and the Government of Venezuela.

II.

In the answer of Venezuela, it is asserted that the claim is from every standpoint unjustifiable as the proof is insufficient upon the question of the citizenship of the individuals interested in the company and also upon the amount of money which was actually invested.

While it is true that a minor portion of the company's stock was the property of a citizen of Venezuela issued to him as a consideration for the original concession of 1893, yet it is undeniable that the greater portion of the stock is the property of citizens of the United States and that their money formed the working capital for the enterprise.

In addition to the evidence heretofore submitted to this honorable Commission there is now presented copies of the following documents:

A certificate of incorporation of the company, together with the certificate of increase of capital; three concessions for La Guayra, Macuto, and Maiquitia, respectively; a contract for lighting Government buildings; the transfer of these concessions and contract from Luis J. Garcia Monjui to Juan B. and Arturo Garcia Monjui; three extensions of concessions and contracts to the company; the proceedings annulling the concession and the new concession to F. Martinez Espino & Co.; the protest of the company against this concession, certified to by the secretary of the United States legation at Caracas; the settlement in court; the refusal of the municipal council to extend the time of the company because of the civil war and the earthquake; the new concession granted to Perez and Morales; the affidavit of witnesses setting forth reasons why the extension of time should have been granted to the company; the protest of the company against the Perez and Morales contract; the letter addressed to the President of the Republic by the minister of the United States at Caracas, and the

statement of amounts expended in construction and operation of the company's plant and of the amounts due for electric light supplied.

III.

In the answer of Venezuela all Federal responsibility is disclaimed for the acts of the municipality of La Guayra on the ground that "Municipalities are juridic autonomous persons capable of contracting rights and obligations."

In reply to this we submit that in the present case this position is untenable from two points of view:

(1) This claim is made by a corporation, a citizen of the United States, and under the terms of the protocol entered into last February between the United States of America and the Republic of Venezuela, it was provided that all claims owned by citizens of the United States which had not been settled by diplomatic agreement or by arbitration should be presented to this Commission to be examined and decided without regard to objections of a technical nature or of provisions of local legislation. By this agreement it is evident that all citizens of the United States who possessed claims were given the right of recourse against the entity which entered into this international engagement. Under this agreement the various political subdivisions of the Government of Venezuela were included. The Government of Venezuela alone represented them; and although it may appear unfair that the Federal Government should bear the responsibility of the acts of municipalities, nevertheless the agreement has been made, and the provisions of the federal constitution making municipalities autonomous and responsible for their own acts only can not be invoked, for in this case the treaty agreement stands superior to the constitution, and the latter must give way. There is in this case no remedy but against the Federal Government, which, by signing the protocol, has obligated itself to redress the wrongful acts of municipalities as well as other constituent parts of its power, and it in turn must look for satisfaction from the aggressor. In signing the protocol Venezuela had full knowledge and understanding of the consequences entailed, and it took into consideration the advantages to be gained, as well as the responsibilities to be assumed, and it can not object to the latter.

(2) The Federal Government of Venezuela had full knowledge of the wrongful acts committed against this company by the protests which were filed, and it should have done all in its power to prevent or redress the wrong. Having knowledge of the facts and failing to take any steps, it tacitly concurred in the wrongs and has therefore made itself liable.

IV.

We submit that the claimant is entitled to an award for damages to its concessionary rights, to the injuries to its property, and for the breaches of its contract.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the La Guayra Electric Light and Power Company, claimant,	} No. 39.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

DECISION AND AWARD.

Opinion by Bainbridge, Commissioner.

The Commission awards to the claimant the sum of \$2,659.61, United States gold; and dismisses the remaining items of the claim without prejudice, for want of jurisdiction.

OCTOBER 2, 1903.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the La Guayra Electric Light and Power Company, claimant,	} No. 39.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

BAINBRIDGE, *Commissioner*:

It appears from the evidence that on October 19, 1893, the municipal council of La Guayra in ordinary session approved a contract granting to one Luis J. Garcia the privilege of establishing an electric-light plant in that city. The contract was executed on behalf of the city by "Rafael Ravard, chairman of the municipal council of the District of Vargas, sufficiently empowered by this corporation" and by Luis J. Garcia, "a resident of this city," on the other part.

On October 11, 1895, Luis J. Garcia transferred to his brothers, Juan B. and Aturo Garcia, all the rights and privileges possessed by the former under the contract. Juan B. Garcia and others incorporated the claimant company under the laws of the State of West Virginia on October 17, 1895.

By the fourth article of the contract of 1893 it was provided that the work to establish the plant was to begin within six months and to be finished within ten months. The twelfth article provided that the contract was to run twenty-five years and the municipality bound itself not to grant to anyone for the District of Vargas equal or better rights for the public lighting or to make any contract relating to any illumination.

In April, 1894, Luis J. Garcia was granted an extension of six months to begin the work of installing the plant; again in March, 1895, another extension of four months was granted him by the municipal council, and still another extension of six months on June 8, 1895.

The minutes of the municipal council of La Guayra, under date of December 27, 1897, show an entry to the effect that all efforts of that body and of the mayor have been useless to obtain the fulfillment of the contract made with Luis J. Garcia. On December 31, 1897, the

municipal council approved a contract with F. Martinez Espino & Co., of Caracas, for the establishment of electric lighting.

On January 23, 1900, in the court of first instance at Petare, in a certain action entered by the La Guayra Electric Light and Power Company against the municipal council of the Vargas district, a settlement of said litigation was effected and made of record whereby F. Martinez Espino & Co. transferred to the La Guayra Electric Light and Power Company all the rights and privileges of the contract executed December 31, 1897, with the council of the Vargas district, and as a compensation for this transfer the La Guayra Electric Light and Power Company recognized the right of Espino & Co. to receive 5 per cent of the shares issued by the cessionary company; and by the fourth article of the settlement the municipal council of the Vargas district and J. B. Garcia as attorney for the La Guayra Electric Light and Power Company "agreed to rescind the contract which with the same purpose was executed under date of October 19, 1893, between the said municipal council and Luis J. Garcia, remaining only in force the caused by this cession." In November, 1897, the municipality had brought suit in the court at Petare for the cancellation of the contract of October 19, 1893. And as indicating the scope of the settlement effected on January 23, 1900, the following is quoted from the judicial record:

This tribunal gives its approval to this transaction (i. e., the settlement), interposing for its greatest force its authority and judicial decree; and resolves, according to the request, to make appear in the file of the action entered by the municipal council of the Vargas district against the La Guayra Electric Light and Power Company for the abrogation of a contract about electric light, that this settlement has been entered into.

The fifth article of the contract with Espino & Co., referred to in the settlement as being the only one thereafter remaining in force, reads as follows:

The work for installation of the company must be started six months from date of this contract (i. e., December 31, 1897), and ended six months after started. This time could be extended for cause of superior forces. The failure to comply within the time stipulated will make this contract abrogated.

However, it was agreed in the settlement effected in court on January 23, 1900, that "as a natural result of this transaction the parties hereto have agreed that the time stipulated in the contract transferred will begin to count from this date."

At an extra session of the municipal council of the Department of Vargas held on January 24, 1901, a resolution was passed that the contract with the La Guayra Electric Light and Power Company had ceased de facto according to the fifth article thereof.

On February 25, 1901, the municipal council of La Guayra ratified a contract for electric lighting, executed on December 12, 1899, with Messrs. Perez and Morales.

On March 6, 1901, J. B. Garcia, as attorney for the La Guayra Electric Light and Power Company protested against the action of the municipal council in canceling the contract of which said company was cessionary as per the judicial settlement of January 23, 1900, and against the refusal of the council to grant the extensions requested for beginning the work, and claiming that the state of civil war and latterly the earthquake of October 29, 1900, had prevented compliance with the contract and rendered necessary the extensions of time asked.

He insisted in the protest that supposing the company were in fault, the council "could only have an action to ask for the abrogation of the contract before the courts of justice, as the contract is mutual."

Substantially upon the foregoing facts a claim is presented here on behalf of the La Guayra Electric Light and Power Company against the Republic of Venezuela for the sum of \$1,500,000. But the memorialist states:

The company is willing, however, on condition that the Republic of Venezuela and the municipalities concerned act in a friendly spirit, paying damages sustained through actual destruction of property and regranting its charter so that its rights may be extended for a period to compensate for the interruption and destruction of its business, that then the loss of profits specified shall be waived and the sum of \$150,000 for actual loss of property in that event received.

The memorial is couched in somewhat vague and indefinite terms. Various interruptions of the company's service are alleged and certain unpaid indebtedness from the municipality to the company is set forth. An alleged arrest of all the employees of the company on one occasion and their detention "in the calaboose" overnight is charged, and it appears that J. B. Garcia was arrested on April 4, 1898, and confined for a period of twenty-four days, the only excuse for his confinement being that he was a political suspect. Since February 23, 1899, said Garcia has been a citizen of the United States. As nearly as can be ascertained from all the evidence presented, the injuries to property complained of occurred during the years 1897, 1898, and 1899, prior, it is to be observed, to the settlement of differences between the company and the municipality effected and made of record in the court of first instance at Petare on the 23d of January, 1900.

The contract of the claimant company then in force was declared null and void "de facto according to the fifth article thereof" by the municipal council on January 24, 1901.

The protest of the company made on March 6, 1901, was against the refusal of the council to grant extensions requested for beginning and executing the work as provided by that article. It is not claimed that the contract had been complied with, but that the state of civil war and the earthquake of October 29, 1900, had prevented compliance and rendered necessary the extensions asked. The protest seeks to "reserve all the rights of the company about the matter to make them valuable before the tribunals of the Republic against the said municipal council."

Except as hereinafter stated, the Government of Venezuela does not appear in any contract or proceeding relating to this company. The parties to the various contracts and judicial proceedings were the municipal council of the district of Vargas and the claimant; but it is sought here to hold the National Government liable for the acts of the municipality as one of the political subdivisions of the State. No evidence is introduced to fix such liability by reason of special legislative or administrative control exercised by the National Government over the municipality. The learned council for the United States argues that by the protocol constituting this Commission all citizens of the United States who possessed claims were given the right of recourse against the entity which entered into this international agreement, and that under this agreement the various political subdivisions of the Government of Venezuela were included; and further, that there is in this case no remedy but against the Federal Government which by sign-

ing the protocol has obligated itself to redress the wrongful acts of municipalities as well as other constituted parts of its power.

The argument, however, overlooks the dual character of municipal corporations; the one, governmental, legislative, or public; the other, proprietary or private.

In their public capacity a responsibility exists in the performance of acts for the public benefit, and in this respect they are merely a part of the machinery of government of the sovereignty creating them, and the authority of the State is supreme.

But in their proprietary character their powers are supposed to be conferred not from considerations of State, but for the private advantage of the particular corporation as a distinct legal personality. (Bouvier's Law Dict., Rawle's ed., 453.)

Those matters which are of concern to the State at large, although exercised within defined limits, such as the administration of justice, the preservation of the public peace, and the like, are held to be under legislative control, while the enforcement of municipal by-laws proper, the establishment of gas works, waterworks, construction of sewers and the like, are matters which pertain to the municipality as distinguished from the State at large. (Ibid.)

The contract between the municipal council and the claimant company for the establishment of the electric-light plant was entered into by the former solely in the exercise of its proprietary functions as a distinct legal personality. Its act was in nowise connected with its governmental or public functions as a political subdivision of the State. So far as the contract is concerned, the municipality is to be regarded as neither more nor less than a private corporation, and as such could sue or be sued in respect thereof. (Dillon, Mun. Corp., sec. 66.)

It is fundamental that citizens or subjects of one country who go to a foreign country and enter into contracts with its citizens are presumed to make their engagements in accordance with, and subject to, the laws of the country where the obligations imposed by the contract are to be fulfilled, and are ordinarily remitted to the remedies afforded by those laws for the redress of grievances resulting from breaches or nonfulfillment of such contracts.

It is only when those laws are not fairly administered, or when they provide no remedy for wrongs, or when they are such as might happen in very exceptional cases, as to constitute grievous oppression in themselves, that the State to which the individual belongs has the right to interfere in his behalf. (Hall, Int. Law, sec. 87.)

In order to bring this claim within the jurisdiction of the Commission, it was, in our judgment, incumbent upon the claimant to show a sufficient excuse for not having made an appeal to the courts of Venezuela open to it, or a discrimination or denial of justice after such appeal had been made. As the claim stands, it is merely a dispute between a citizen of the United States and a citizen of Venezuela in regard to their respective rights under the terms of a certain contract. It has not the necessary basis for an international reclamation. The case is very different from one in which the Government itself has violated a contract to which it is a party. In such a case the jurisdiction of the Commission under the terms of the protocol is beyond question. All that is decided here is that the Commission has no jurisdiction of the claim of the La Guayra Electric Light and Power Company in its present status and the said claim, except as hereinafter stated, is hereby dismissed on that ground without prejudice to the rights of either the claimant company or the municipality concerned.

But it appears in evidence that on July 7, 1894, the National Government made a contract with Luis J. Garcia "for himself and for the company which he may organize" by which the said Garcia or his

company agreed to provide electric light for the custom-house and other public buildings at La Guaira, the Government agreeing to pay to Garcia or to the company for such service the sum of 2,000 bolivars monthly. The claimant herein alleges that there is due from the National Government, according to this contract for services rendered from July 1 to December 1, 1897, the sum of \$2,307.69. This indebtedness is not denied by the Government of Venezuela, and an award is therefore made for said sum with interest thereon at 3 per cent per annum from December 1, 1897, to December 31, 1903, the anticipated date of the final award by this Commission.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of La Guayra Electric Light and Power Company, against the Republic of Venezuela, No. 39, the sum of two thousand six hundred fifty-nine and 61/100 dollars (\$2,659.61) United States gold is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

The remaining items of the claim are hereby dismissed without prejudice for want of jurisdiction.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered October 2, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Henry T. Duke, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 40.
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This claim was presented to the Commission on the memorial of the claimant, and was supported at the time of presentation by the agent of the United States in an oral argument. A brief was filed by the agent of Venezuela in answer and a brief was filed by the agent of the United States in replication.

[Translation.]

HENRY T. DUKE }
 v. } Claim No. 40.
 VENEZUELA. }

ANSWER.

Honorable Members of the Venezuelan American Mixed Commission:

The undersigned, agent of the Government of Venezuela, has studied the claim presented in the name of Henry T. Duke, and respectfully shows to the tribunal:

It is to be noticed, with respect to the present claim, that it has not been presented by the interested party, but by a lawyer who calls himself his attorney in fact. In the memorial address by the latter to the honorable Commission an extension of time is asked for the presentation of proofs which, up to the date of this answer, have not been furnished.

As the claimants have disposed of sufficient time to make all the necessary proofs in support of the claim, and as in the present case this has not been done, the undersigned finds himself under the necessity of rejecting this claim because it lacks all the foundation required by law and equity.

Besides, the power conferred upon the lawyer claimant by the American citizen Henry T. Duke can not serve for the purpose of personal representation before this Commission, which is an international tribunal, and to appear before which a special authorization is necessary. The power produced by the said lawyer bears a date long before that of the convention which created this tribunal, and therefore the principal could not have had in mind that his attorney should represent him before it.

The claim ought, therefore, to be disallowed as not having been presented by an authorized person.

Caracas, July 24, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF }
 of Henry T. Duke, claimant, } No. 40.
 v. }
 THE REPUBLIC OF VENEZUELA. }

REPLICATION ON BEHALF OF THE UNITED STATES.

In the above-entitled matter claim is made by Mr. Henry T. Duke, a citizen of the United States—

(a) For 41,200 bolivars due him under a contract to build water-works at Maracay, a city of the former State of Miranda. That this contract was fully carried out is borne out by the certificate of the treasurer of the State, Genaro Ramirez, submitted in evidence with the memorial. By this certificate there is an admitted obligation on the part of the State of Miranda to Mr. Duke for the amount above specified.

(b) A claim is also made for the sum of \$3,000 United States gold for expenses incurred by the claimant while endeavoring to collect the amount due him on the contract for the waterworks and for expenditures which he was obliged to make in their preservation.

(c) A further claim is made for the balance under a contract between the claimant and the department of public works of Venezuela for the construction of a coast-guard building at La Guaira. The facts regarding this contract are set forth in the official yearbook of the department of public works for the year 1899, at pages 6 and 7 of Volume I, except that there appears to have been an agreement subsequent to this contract for an increase in price. The documents in regard to this increase can be found in the department of public works and it is respectfully requested that they be called for by the Commission, inasmuch as the representative of the claimant has been unable to obtain them.

I.

As to the first item of the claim, there can be no doubt regarding the responsibility of Venezuela for its payment, although the State of Miranda and not the Federal Government was the contracting party. As to the question of national responsibility for the acts of a State, we refer to the case of the *Montijo*, in the second volume of Moore's International Arbitrations, at page 1421. In this case there was a disagreement between the Commissioners and the matter was referred to the umpire—Mr. Robert Bunch—who rendered an award in favor of the claimants. On the question of national responsibility for the acts of a State it was contended by the Colombian arbitrator that the Union had no connection with the debts of a State, and on this point the umpire replied as follows:

To this the undersigned replies, first, that in his opinion the Government of the Union has a very clear and decided connection with the debts incurred by the States of the Union toward foreigners whose treaty rights have been invaded or attacked; and, secondly, that the debts so incurred by the separate States are in no way private, but, on the contrary, entirely public in their character.

As to the first point referred to by the umpire in the above case, he goes on to say:

If this rule, which the undersigned believes to be beyond dispute, be correctly laid down, it follows that in every case of international wrong the General Government of this Republic has a very close connection with the proceedings of the separate States of the Union. As it, and it alone, is responsible to foreign nations, it is bound to show in every case that it has done its best to obtain satisfaction from the aggressor.

Regarding the second point to which the umpire in the above case referred, he says:

As regards the second point made by the Colombian arbitrator, that the debts incurred to foreigners by States of the Union are private in their character, the undersigned can only express his dissent from the doctrine. If an engagement, pecuniary or other, made by the constitutional head of a State, acting, as in the present case, "in virtue of powers conferred by law," is to be considered in the same light as an ordinary mercantile debt and only to be recoverable in the same manner, the possibility of a State contracting with either native or foreigner would soon be reduced to very narrow limits. The chances of repayment would depend on the stability of the contracting government, and this of itself would introduce an element of considerable uncertainty into such transactions.

* * * * *

For these reasons the undersigned holds, as a general principle, that the Government of the Union is responsible in certain cases for the wrongs inflicted on foreigners by the separate States, and that debts contracted by the constituted authorities of those States are not private in their character. He is compelled, therefore, to dissent from the sixth reason of the Colombian arbitrator.

We submit that the responsibility of the Federal Government in relation to this contract is clearly established and that an award should be made for the amount claimed.

As to the amount of money which was expended in an effort to collect the sum due on the contract and for the maintenance of these waterworks, specified in the second item of the claim, we submit that under the circumstances this item of the claim is fair and that an award should be made.

II.

Regarding the third item of the memorial we submit that the report of the department of public works above referred to is conclusive evidence as to that part of the claim which is definitely stated, and that when the documents are received from the department of public works regarding the increase in the price agreed to, it will enable the Commission to determine the additional amount due the claimant.

III.

In the answer of Venezuela in this claim it is contended that the power of attorney conferred upon the representative of the claimant "can not serve for the purpose of personal representation before this Commission." We submit that the claim is not being made by the attorney in fact personally and for his own benefit, but as the representative of the claimant, and that therefore no objection can be raised. Moreover, this claim is presented by the United States of America on behalf of the claimant, and the question of the technical right of an attorney in fact to present the claim is of no importance. The Commission has full jurisdiction in this matter by virtue of the first paragraph of article 2 of the protocol, which reads as follows:

The Commissioners, or umpire, as the case may be, shall investigate and decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim, and to hear oral or written arguments made by the agent of each Government on every claim.

IV.

An award should be made for the full amount claimed, together with interest.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Henry T. Duke, claimant.	} No. 40
v.	
THE REPUBLIC OF VENEZUELA.	

DECISION.

Opinion by Doctor Paúl, commissioner.
The Commission disallows the claim.
OCTOBER 2, 1903.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Henry T. Duke, claimant.	} No. 40.
v.	
THE REPUBLIC OF VENEZUELA.	

Doctor PAÚL, *Commissioner*:

This claim has been presented on behalf of Henry T. Duke, an American citizen, for the payment of the sum of 41,200 bolivars, price of the aqueduct of the town of Maracay, State of Miranda, and the sum of \$3,000 expended by the claimant while trying to obtain payment for the value of the work and for its preservation.

Another part of the claim for \$2,800 is based on the balance due to the claimant by the Government of Venezuela, according to a contract with the department of public works for the construction of a house in La Guaira, for the service of the revenue cutters, not completed on account of the revolutionary troubles and consequent suspension of public works.

The claimant's attorney in this city, M. O. Romero Sanchez, on making the original presentation of this claim to the Commission made a statement, which was reproduced by the honorable agent for the United States, saying that said Henry T. Duke had at his residence in Philadelphia the documents proving his rights, which documents have not been presented, notwithstanding the long time elapsed since the formal presentation of the claim.

The certificate signed at Maracay on December 15, 1898, by the treasurer, and by the acting president of the State, José T. Roldan, which literally reads as follows: "The citizen who has built the Maracay aqueduct, is a creditor to the treasury of the State of Miranda for the sum of 41,200 bolivars in accordance with the liquidation of the accounts made on this date," is not a proof that Henry T. Duke was a creditor to the State of Miranda for the said sum, the terms of that certificate being very indefinite.

The other part of the claim has not been proven, not having been produced—the contract made with the department of public works for the construction of the house in La Guaira—but on the contrary, it appears from the reproduced paragraphs from the memory of said

department for the year 1899 that Duke received the first payment of \$1,200 on account of the price of a house which he should have delivered fully completed a short time afterwards, and Mr. Duke's attorney says in his exposition addressed to this Commission that Duke was unable to complete the house on account of the political troubles that caused the suspension of the public works.

The foundation of this claim not having been sufficiently proved it must be disallowed.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

DECISION.

THE UNITED STATES OF AMERICA ON BEHALF of Henry T. Duke, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 40.
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The above-entitled claim is hereby disallowed.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered October 2, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Sofia Ida Wiskow de Rudolff and Frederick William Rudolff, heirs at law of Henry Frederick Rudolff, claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 41.
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This claim was presented to the Commission on the memorial of the claimants, and was supported at the time of presentation by the agent of the United States in an oral argument. A brief was filed by the agent of Venezuela in answer and a brief was filed by the agent of the United States in replication.

[Translation.]

SOFÍA IDA WISKOW DE RUDLOFF AND FREDERICK William Rudloff, v. VENEZUELA.	}	Claim No. 41.
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ANSWER.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied the claim presented by Sofía Ida Wiskow de Rudloff and Frederick William Rudloff, and respectfully informs this tribunal.

Before proceeding to answer this claim upon the merits, the undersigned should submit to the consideration of the tribunal a plea to the jurisdiction which ought to be determined beforehand and which is the following:

Under date May 8, 1901, Sofía Ida Wiskow de Rudloff and Frederick W. Rudloff, through their attorney in fact, Dr. Adcanio Negretti, sued the nation before the federal court in order that they might compel it to pay them, in their capacities of heirs of Henry F. Rudloff, the sum of 3,698,801 bolivars for damages originating out of the breach of a contract which the claimants alleged their predecessor in interest had entered into with the Government of Venezuela. On account of the fact that the claimants sought the jurisdiction of the tribunals of Venezuela to submit to them their claim—a voluntary and deliberate act on their part—it is evident that they submitted themselves to the provisions of local legislation, both substantive and adjective, in all and everything that might pertain to the suit instituted. Now, then, article 216 of the Code of civil procedure now in force provides: "If the discontinuation is limited to the proceeding, it can not be had without the consent of the opposite party." The federal court has assumed jurisdiction over and decided the claim in question in the department of first instance. Both parties have appealed from its decision, and the court of appeals has taken cognizance of the matter.

The party defendant not having given its consent for the discontinuation in the manner in which the claimants have done so, it is clear that these latter can not withdraw the claim from the jurisdiction of the last tribunal in order to submit it to this Commission.

The protocol signed in Washington between the two governments can not, in any way, refer to the claims of American citizens which are in the State of the present case, because this would be virtually to deny the competence of the Venezuelan tribunals to decide questions which have been submitted to them by parties litigant and by the operation of the local law.

Besides, it is to be observed that by article 12 of the contract entered into by the predecessor in interest of the claimants, the parties stipulated that the doubts and controversies which might arise by reason of it should be decided by the tribunals of the Republic, and could never give rise to international claims.

The case of a denial of justice can not be alleged, since aside from the fact that the department of first instance of the federal court has

decided favorably to the claimants, the jurisdiction of the tribunals of the Republic has not been exhausted in this litigation.

In case the honorable tribunal should decide that the preliminary objection interposed is not well founded, the undersigned proceeds to give his answer to the claim on the merits and denies it in all its parts for the following reasons:

(1) Because the nation was not a party to the contract entered into by the predecessor in interest of the claimants.

(2) Because the acts which they say were committed in violation of such contract were done by municipal authorities.

(3) Because in federal republics municipalities are autonomous entities and juridical personalities, capable of contracting rights and obligations, and for whose acts, in the matter of contracts, the State can not be responsible.

(4) Because the damages claimed are, in their greater part, remote, unascertained, and indirect damages for the recovery of which the civil law gives no right.

(5) Because the contractor violated the contract made with the municipality in the first place, disposing during the time when he was in charge of the market of the whole of its rents.

In proof of the claims alleged, the undersigned takes the liberty of producing herewith Nos. 8772, 8773, 8775, and 8776, of the Official Gazette, wherein are inserted the briefs which, in the former trial he brought forward in his character of attorney-general of the nation.

For the reasons set forth, and those which will be found in the briefs produced, the claim ought to be disallowed.

Caracas, July 31, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Sofia Ida Wiskow de Rudloff and Frederick William Rudloff, heirs at law of Henry Frederick Rudloff, claimants.	} No. 41.

v.

THE REPUBLIC OF VENEZUELA.

REPLICATION ON BEHALF OF THE UNITED STATES.

The United States has presented the claim of Sofia Ida Wiskow de Rudloff and Frederick William Rudloff, American citizens, as the heirs at law of Henry Frederick Rudloff, deceased, for the sum of 3,698,801 bolivars, and interest, for the loss of capital and for damages arising from the abrogation by the Government of Venezuela of a certain contract between the United States of Venezuela and Henry Frederick Rudloff, set forth in the Official Gazette No. 5717, dated the 8th of February, 1893, which has been placed in evidence.

By this contract Mr. Rudloff was put in possession of the market of San Jacinto and of the square, grounds, and building appurtenant thereto by public functionaries duly authorized and representing the

minister of public works and the government of the Federal district. Under the contract Mr. Rudloff began the work of constructing a market building, but met with much hostility from Government employees tending to prevent the carrying out of the contract. By an order of the chief executive of the United States of Venezuela, the governor of the Federal district placed the contract before the municipal council who, on the 8th day of September, 1893, by a decree declared it null and authorized the governor to take possession of the market and to demolish the work done by Mr. Rudloff. This decree was carried out by the public functionaries, notwithstanding the protests of Mr. Rudloff.

On the 26th of September, 1893, the matter was called to the attention of the Government of the United States through the Department of State. The Government of the United States, although acknowledging the acts of the Venezuelan authorities to have been arbitrary and unjust, advised Mr. Rudloff, as a preliminary step, that he should seek redress before the competent court of Venezuela. In accordance with this suggestion, an action was commenced against the Government of Venezuela on the 8th day of May, 1901, in the federal court. Judgment was given by the chamber of first instance of the federal court as appears in No. 8770 of the Official Gazette of the 14th of February, 1903. This decision recognized the existence and validity of the contract, the arbitrary and unlawful acts which caused the failure to fulfill and perform the same and the responsibility of the Federal Government. An appeal was taken from this decision on the 16th of February, 1903.

The protocol of an agreement between the United States of America and the Republic of Venezuela, for the submission to arbitration of all unsettled claims against Venezuela, was signed *on the day after the appeal was taken* creating this high commission to examine and decide all claims owned by citizens of the United States against the Republic of Venezuela which had not been settled by diplomatic agreement or by arbitration between the two Governments. The claim has, in consequence, been brought before this tribunal for its decision.

I.

In the answer of Venezuela, objection is raised to this claim on the question of the jurisdiction of this high tribunal and also to the merits of the claim. Objection to the jurisdiction is made on account of the fact that the claimant sought the jurisdiction of the tribunals of Venezuela to submit to them their claim as a voluntary and deliberate act on their part, and it is asserted that it is evident that they submitted themselves to the provisions of local legislation in everything that might appertain to the suit. The honorable agent of Venezuela takes the ground that the federal court of Venezuela has assumed jurisdiction over and decided the claim in the chamber of first instance, and that both parties having appealed from its decision and the court of appeals having taken cognizance of the matter, it is impossible to bring this claim before this high Commission because of the provision of Article 216 of the Code of Civil Procedure, which provides, "If the discontinuation is limited to the proceeding, it can not be had without the consent of the opposite party." The honorable agent of Venezuela contends that Venezuela, not having given its consent for the discontinuation of the suit before the court of appeals, the claimant can not with-

draw the claim from the jurisdiction of that tribunal in order to submit it to this Commission.

In reply to this contention, we submit that there has been a full and complete consent on the part of Venezuela to the submission of this claim to this high tribunal by virtue of the protocol signed in Washington on the 17th of February, 1903. In that instrument Venezuela specifically agrees:

All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to the commission hereinafter named by the Department of State of the United States or its legation at Caracas shall be examined and decided by a mixed commission. * * *

It is evident that by this act there was a perfect agreement on the part of Venezuela that this claim should be submitted to this tribunal, and from the act of the claimants in presenting this claim it is perfectly clear that they have availed themselves of the right to submit their claim. Moreover the Code of Civil Procedure provides in article 492:

ART. 492. In any condition of the case in which the parties may signify a wish to have it submitted to arbitrators, the course of proceedings shall be suspended and the case immediately passed over to those named.

Also article 11 of the same code provides that:

ART. 11. In the cases of the application of private international law, *the judges shall first consider the public treaties of Venezuela* with the respective nation, with regard to the point in question. * * *

Which provision is in conformity with article 723 of this same code, which provides that the regulations of Title XVIII shall be subordinate to international treaties and conventions.

It is further contended by the honorable agent of Venezuela, in his answer, that article 12 of the contract entered into by the Government of Venezuela and Mr. Rudloff provided that all doubts or controversies arising on account of the contract shall be decided by the competent tribunals of the Republic, and should not give rise to international claims, and that therefore the claim can not be presented to this Commission.

In reply to this we submit the following considerations. By the express language of this article the questions which it stipulates shall be submitted, if they arise, to the Venezuelan courts are only questions relating to the interpretation and effect of the agreement; that is to say, questions which arise out of the agreement. This clause was not intended to apply to and can not be construed to apply to a controversy with relation to the existence of the contract, nor to a claim arising from the annulment and impairment of the right thereby granted by a voluntary, arbitrary act of the Venezuelan Government. As has been clearly shown the substantial cause of action in this case is not the contract nor its enforcement, but the cause of action arises from the wrongful acts of the Venezuelan Government in abrogating and destroying the right granted by the contract. This question is not included in the stipulations of the contract, and is not one of the questions which must be submitted to the local tribunals of Venezuela. Again, this provision of the contract if binding at all was equally binding upon both parties, and the obligation thereby incurred was as binding upon the Government of Venezuela as upon the claimants. The Government of Venezuela violated this provision of the contract, and this claim arises because of this violation. It was

the duty of the Government of Venezuela, if it had cause of complaint against the party contracting with it, to apply to its own courts for relief. This was its duty as a matter of natural law as well as under the terms of this article of the contract. Having violated this duty and this provision of the contract in this respect, a right accrues to the claimants against it which is a proper subject of international intervention, and this controversy the claimants are not bound to submit to the local courts of Venezuela for adjudication, either as a matter of international law or by the article of the contract.

We submit that the competency of this high Commission to take cognizance of and decide this claim is incontrovertible, primarily by virtue of the powers conferred upon it by the agreement between the United States of America and Venezuela, and secondarily by virtue of the provisions of the Code of Civil Procedure of Venezuela above set forth.

II.

After concluding his argument upon the question of jurisdiction, the honorable agent of Venezuela proceeds to make answer to the claim on merits, and denies it in all its parts.

(1) The first assertion in the answer is that the nation was not a party to the contract entered into by Mr. Rudloff. In reply to this, we call the attention of the Commission to the wording of the contract which has been submitted in evidence. In its beginning it reads:

The minister of public works and the governor of the Federal district, sufficiently authorized by the Chief of the Executive Power, parties of the first part; and Henry F. Rudloff, civil engineer, citizen of the United States of America, residing in Caracas, party of the second part.

In article 1, the party of the second part obligated himself to construct a public market upon grounds which were referred to as "the properties of the municipality or the government." In article 4, "the National Government and the city of Caracas cede to the contractor the buildings and the grounds mentioned." In article 10, the party of the second part was given the right to import through the Federal custom-house of La Guayra free of all tariff duties all materials and tools which he might require in construction of the market. And in article 11 it was provided that during the time of the contract neither the National Government nor the municipality would allow any other market to be constructed in Caracas.

We submit that this sufficiently answers the contention of Venezuela above referred to.

(2) It is asserted by Venezuela that the acts complained of in violation of the contract were done by municipal authority, and that the Federal Government is therefore not responsible.

We again call the attention of the Commission to the action of the governor of the Federal district who in obedience to the order of the Chief Executive of the United States of Venezuela submitted the contract to the municipal council, who on the 8th of September, 1893, declared it null, authorized the Government to take possession of the market and ordered the demolition of the work. It is evident, therefore, that the Federal Government is directly responsible for the wrongful acts committed.

(3) It is contended by Venezuela that the damages claimed are in their greater part remote, indirect, and unascertained, and that there is

no right to their recovery. This is certainly in opposition to the findings of the Federal court which gave a decision in favor of the claimants. Moreover, the evidence as to the damages suffered, which has been submitted to this Commission, is full and complete, and is sufficient upon which to base an award in accordance with the amount claimed.

(4) Objection is made by Venezuela that the contractor violated the contract by disposing, during the time that he was in charge of the markets, of the whole of its rents. In reply to this we refer to article 5 of the contract which gave to Mr. Rudloff exclusive charge of the management and collection of the proceeds of the market. This objection, therefore, can not be sustained.

III.

We submit that an award should be made for the full amount claimed, together with interest.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Sofia Ida Wiskow Rudloff and Frederik W. Rudloff, claimants,	} No. 41.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

ON JURISDICTION.

BAINBRIDGE, *Commissioner*:

The Government of Venezuela demurs to the jurisdiction of the Commission in respect to the above-entitled claim, and bases its demurrer on the following grounds:

First. That on May 6, 1901, Sofia Ida Wiskow Rudloff and Frederik W. Rudloff sued the nation before the Federal court in order to compel it to pay them, in their capacities as heirs of Henry J. Rudloff, the sum of 3,698,801 bolivares for damages originating in an alleged breach of the contract entered into between their predecessor in interest, the said Henry J. Rudloff, and the Government of Venezuela, for the construction of a market building in Caracas. It is argued that as the claimants sought the jurisdiction of the tribunals of Venezuela to submit to them their claim, a voluntary and deliberate act on their part, they have submitted themselves to the provisions of local legislation, both substantive and adjective, in all and everything that might pertain to the suit; that the Federal court has assumed jurisdiction over and decided the claim; that the parties have both appealed from the decision of the court and the court of appeals has taken cognizance of the matter; that article 216 of the Code of Civil Procedure in force provides: "If the discontinuation is limited to the proceeding, it can not be had without the consent of the opposite party," and that the defendant Government not having given its consent for the discontinuance in the manner in which the claimants have done so, the claimants

can not withdraw the claim from the jurisdiction from the Federal court in order to submit it to the Commission.

Second. That article 12 of the aforesaid contract provides that "the doubts and controversies that may arise on account of this contract shall be decided by the competent tribunals of the Republic in conformity with the laws and shall not give reason for any international reclamations," and that the case of a denial of justice can not be alleged because the court of first instance has decided the case favorably to the claimants, and the jurisdiction of the tribunals of the Republic has not been exhausted in the litigation.

These two grounds of demurrer will be considered here in the order stated. But it is to be remarked at the outset that the Commission, as a court of last resort, is the sole and conclusive judge of its own jurisdiction. Mr. Webster, then Secretary of State, said, in relation to the United States and Mexican Commission of 1839, that it was "essentially a judicial tribunal with independent attributes and powers in regard to its peculiar functions," and that "its right and duty, like those of other judicial bodies, were to determine upon the nature and extent of its own jurisdiction, as well as to consider and decide upon the merits of the claims which might be laid before it." The determination by the Commission of the objections to its jurisdiction raised by the Government of Venezuela, as above set forth, is clearly within the scope of its delegated authority.

In determining the first objection, certain material facts must be borne in mind. On the 6th of May, 1901, the claimants brought suit in the chamber of first instance of the Federal court against the Government of Venezuela. This suit proceeded to trial and judgment, which was entered on the 14th of February, 1903. On February 16, 1903, the attorney-general, on behalf of the Government, appealed from the judgment, and on the same day the claimants appealed from it. The case thus remains pending in the courts.

The parties to an action pending in court may always by agreement submit the whole or any part of the matter or matters in issue to arbitration. Indeed, the submission to arbitration, in the absence of collusion or fraud, is favored by courts upon broad grounds of public policy. This principle of arbitration enters into and forms a part of every civilized code of jurisprudence, and to this rule the jurisprudence of Venezuela is no exception. Article 493 of the Venezuelan Code of Civil Procedure provides:

In any condition of the case in which the parties may signify a wish to have it submitted to arbitrators, the course of proceeding shall be suspended and the case immediately passed over to those named.

The rule above stated is the same, so far as it touches the question here, where the arbitration is between nations and the submission concerns a private claim. Only the Government of the claimant, acting in his behalf, enters into the agreement for arbitration.

In this case the parties to the action pending in the local tribunals are on the one hand the claimants, citizens of the United States, as plaintiffs, and the Government of Venezuela on the other as defendant. Have these parties litigant agreed to submit the cause to the arbitration of this international tribunal? If they have, the agreement is binding upon both.

The appeal was taken by both parties from the judgment of the lower court on February 16, 1903. On the following day the Gov-

ernment of Venezuela signed the protocol constituting this Commission, and by that act agreed to submit to the arbitrament of this tribunal:

All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments.

Nothing could be clearer than the language thus employed to define the scope of the jurisdiction conferred, or than that the jurisdiction conferred is inclusive of such a claim as this one of the Rudloff heirs against the Venezuelan Government. The signing of the convention by the two Governments was in the solemn exercise of the highest prerogative of sovereignty, and it is the duty of the Commission to so interpret the terms of the convention, and, under its oath, so to act as to give effect to the intention, thus unequivocally expressed, of the high contracting parties.

Vattel, speaking of the interpretation of treaties, says:

The interpretation which renders a treaty null and without effect can not be admitted. It ought to be interpreted in such a manner as it may have its effect, and not to be found vain and nugatory. (Vattel, ch. 17, sec. 283.)

The claim presented here is a claim owned by citizens of the United States of America against the Republic of Venezuela. It has not been settled by diplomatic agreement or by arbitration. The Government of Venezuela has in the most solemn manner agreed to submit such claims to the jurisdiction of this Commission, under the plain terms of the convention of February 17, 1903. The claimants, availing themselves of the action of their Government in their behalf, agree to submit their claim to the jurisdiction of this Commission by its presentation here.

The identical objection to the jurisdiction was urged in the case of *Selwyn v. Venezuela* before the British and Venezuelan Claims Commission now in session at this capital. In sustaining the jurisdiction of the Commission, Plumley, umpire, said:

International arbitration is not affected jurisdictionally by the fact that the same question is in the courts of one of the nations. Such international tribunal has power to act without reference thereto, and if judgment has been pronounced by such court, to disregard the same, so far as it affects the indemnity to the individual, and has power to make an award in addition thereto or in aid thereof, as in the given case justice may require. Within the limits prescribed by the convention constituting it, the parties have created a tribunal superior to the local courts.

In fact, the law which governs this Commission, and which it must apply in the exercise of its functions, is not the municipal law of either of the contracting nations, but it is that paramount code which is obligatory upon both.

Says Hall:

International law consists in certain rules of conduct which modern civilized states regard as binding on them in their relations with one another with a force comparable in nature and degree to that binding the conscientious person to obey the laws of his country, and which they also regard as enforceable by appropriate means in case of infringement.

These rules of conduct recognize the right and duty of a state to protect its citizens or subjects at home or abroad, and the corresponding obligation of a state to make due reparation and give just compensation for injuries inflicted upon another state or upon its citizens or subjects. And whenever two independent nations have by solemn compact provided a forum to determine the extent of the injuries

inflicted by the one upon the other, and the means of redress therefor, the legislation of neither of the contracting parties can interpose to limit or defeat the jurisdiction of that forum in respect of any matter fairly within the purview of the compact. The two Governments have for the purposes expressed created a tribunal superior to the local courts—

an independent judicial tribunal possessed of all the powers and endowed with all the properties which should distinguish a court of high international jurisdiction, alike competent, in the jurisdiction conferred upon it, to bring under judgment the decisions of the local courts of both nations and beyond the competence of either Government to interfere with, direct, or obstruct its deliberations.

II.

The second objection to the jurisdiction of the Commission raised by the Government of Venezuela is based upon article 12 of the contract, which reads as follows:

The doubts or controversies that may arise on account of this contract shall be decided by the competent courts of the Republic, in conformity with the laws, and shall not give reason for any international reclamation.

The memorial states that, pursuant to an order of the National Executive, the governor of the Federal District placed the contract in question before the municipal council, who, on September 8, 1903, by a decree declared it null and authorized the governor to take possession of the market and demolish the work done by Rudloff, and that this decree was carried out by the public functionaries, notwithstanding the protests of Mr. Rudloff. For the purpose of this preliminary inquiry as to jurisdiction, the statements in the memorial are to be considered as true, the sole question for the present being whether, if true, this Commission can take cognizance of the claim.

In regard to that portion of article 12 of the contract inhibiting international reclamation, it is perfectly obvious that under established principles of the law of nations such a clause is wholly invalid. A contract between a sovereign and a citizen of a foreign country not to make matters of differences or disputes arising out of an agreement between them or out of anything else the subject of an international claim, is not consonant with sound public policy and is not within their competence. In the case of *Flanagan, Bradley, Clark & Co. v. Venezuela*, before the United States and Venezuelan Commission of 1890, Mr. Commissioner Little said:

It (i. e., such a contract) would involve, pro tanto, a modification or suspension of the public law, and make the sovereign in that instance to disregard his duty toward the citizen's own government. If a state may do so in a single instance, it may in all cases. By this means it could easily avoid a most important part of its international obligations. It would only have to provide by law that all contracts made within its jurisdiction should be subject to such inhibitory condition. For such a law, if valid, would form a part of every contract as fully as if expressed in terms upon its face. Thus we should have the spectacle of a state modifying the international law relative to itself. The statement of the proposition is its own refutation. The consent of the foreign citizens concerned can, in my opinion, make no difference—confer no such authority. Such language employed in a contract contemplates the potential doing of that by the sovereign toward the foreign citizen for which an international reclamation may rightfully be made under ordinary circumstances. Whenever that situation arises—that is, whenever a wrong occurs of such a character as to justify diplomatic interference—the government of the citizen at once becomes a party concerned. Its rights and obligations in the premises can not be affected by any precedent agreement to which it is not a party. Its obligation to protect its own citizens is inalienable.

The contingency suggested by Commissioner Little appears to have happened in the case of Venezuela, since article 139 of the constitution of 1901 provides that the inhibitory condition against international reclamation shall be considered as incorporated, whether expressed or not, in every contract relating to public interest; and essentially the same provision was embodied as article 149 of the constitution of 1893. These constitutional provisions and legislative enactments of like nature are, however, clearly in contravention of the law of nations; they are pro tanto modifications or suspensions of the public law and beyond the competence of any single power. For every member of the great family of nations must respect in others the right with which it is itself invested; and the right of a state to intervene for the protection of its citizens, whenever by the public law a proper case arises, can not be limited or denied by the legislation of another nation. Mr. Justice Story says:

The laws of no nation can justly extend beyond its own territory, except so far as regards its own citizens. They can have no force to curtail the sovereignty or right of any other nation within its own jurisdiction. And however general and comprehensive the phrases used in our municipal laws may be, they must always be restricted in construction to places and persons upon whom the legislature have jurisdiction. (The Apollon, 9 Wheaton, 362.)

The subject of international reclamations is by its very terms outside the legislative jurisdiction of any one nation. And it is furthermore an utter fallacy to assert that this principle is an encroachment upon national sovereignty. That nation is most truly sovereign and independent which most scrupulously respects the independence and sovereignty of other powers.

Neither is it within the power of a citizen to make a contract limiting in any manner the exercise by his own government of its rights or the performance of its duties. A state possesses the right and owes the duty of protection to its citizens at home and abroad. The exercise of this right and the performance of this duty are as important to the state itself as the protection afforded may be to the individual. The observance of its obligations is fundamental and vital to every government. An injury to one of its citizens is an injury to the state, which punishes for infraction of municipal law and demands redress for violation of public law upon broad grounds of public policy. The individual citizen is not competent by any agreement he may make to bind the state to overlook an injury to itself arising through him, nor can he by his own act alienate the obligations of the state toward himself except by a transfer of his allegiance.

There remains to be considered that portion of article 12 of the contract which provides that "the doubts and controversies that may arise on account of this contract shall be decided by the competent courts of the Republic in conformity with the laws."

Assuming for the purposes of the examination, but in no wise admitting that this portion of the article refers to such a case as is presented here, it must be apparent that the obligations of the article bore equally and reciprocally upon both parties to the contract, upon the Government of Venezuela as well as upon the claimants, and that when the Government, without resort to the tribunals of the Republic, declared the contract null, the claimants were absolved from all obligations if any had theretofore existed in that behalf.

In the great case of the Delagoa Bay Company the Government of

the United States said, in reply to a similar objection raised by Portugal, that it was not within the power of one of the parties to an agreement, first, to annul it, and then to hold the other party to the observance of its conditions as if it were a subsisting engagement. It is contrary to every principle of natural justice that one party to a contract may pass judgment upon the other; and this is no less true when the former is a government and the latter is a foreign citizen. Public law regards the parties to a contract as of equal dignity, equally entitled to the hearing and judgment of an impartial and disinterested tribunal. "The acts of a sovereign," says Mr. Wheaton, a very high authority, "however binding upon his own subjects, if they are not conformable to the public law of the world, can not be considered as binding upon the subjects of other states. A wrong done to them forms an equally just ground of complaint on the part of their government, whether it proceed from the direct agency of the sovereign or is inflicted by the instrumentality of his tribunals." (Wharton's Int. Law Dig., sec. 242.)

It is undoubtedly true that citizens or subjects of one country who go to a foreign country and enter into contracts with its citizens are presumed to make their engagements in accordance with and subject to the laws of the country where the obligations of the contract are to be fulfilled, and ordinarily can have recourse to their own government for redress of grievances only in case of a denial of justice. But, as was forcibly stated by Mr. Cass, Secretary of State of the United States—

The case is widely different when the foreign government becomes itself a party to important contracts, and then not only fails to fulfill them, but capriciously annuls them, to the great loss of those who have invested their time, labor, and capital in their reliance upon its good faith and justice.

It is just such a "widely different case" that is presented here. It is just such a case that is within the terms of Article I of the protocol, defining the jurisdiction of this Commission. And, in my judgment, the Commission can not refuse to take cognizance of this claim without disregarding its solemn oath "carefully to examine and impartially to decide according to justice and the provisions of said convention all claims submitted to it in conformity with its terms."

Prima facie, the memorial presents the case of a wrongful annulment by the arbitrary act of the Venezuelan Government of a contract to which it was a party, injuriously affecting the rights of the other party thereto, who was a citizen of the United States. Manifestly, the first part of article 12 of the contract relates solely to questions growing out of the agreement itself, and can not be construed to apply to a claim resulting from the capricious annulment of the agreement by one of the parties. Such a claim does not rest upon any doubts or controversies arising out of the contract, but is based upon the fact that the claimants have been deprived of valuable rights, moneys, property, and property rights by the wrongful act of the Government of Venezuela, which they were powerless to prevent and for which they claim compensation. The "doubts and controversies" referred to in article 12 obviously relate to questions affecting the interpretation of the contract, to questions whether it was being or had been complied with, and the like. As to such matters the parties, by that article, mutually agreed to have recourse to the local tribunals. But when the Government, on whatever grounds of policy, saw fit to abrogate the contract

itself, and then to appropriate or to destroy the property or the property rights of the claimants, it must be held to have done so subject to the obligation to make full and adequate reparation, and in full recognition of the right of the claimants, as citizens of the United States, to seek the intervention of their Government for their protection.

The term "property" embraces every species of valuable right and interest, including real and personal property, easements, franchiseements, and hereditaments.

Property is divided into corporeal and incorporeal. The former comprehends such property as is perceptible to the senses, as lands, houses, goods, merchandise, and the like; the latter consists of legal rights, as choses in action, easements, and the like. (Bouvier's Law Dict., Rawle's ed., 731.)

The law of Venezuela recognizes that property rights may rest in contracts. Article 691 of the Civil Code provides:

La propiedad y demás derechos se adquieren y transmiten por sucesión, por donación y por efecto de los contratos.

The taking away or destruction of rights acquired, transmitted, and defined by a contract is as much a wrong entitling the sufferer to redress as the taking away or destruction of tangible property; and such an act committed by a government against an alien resident gives, by established rules of international law, the government to which the alien owes allegiance, and which in return owes him protection, the right to demand and to receive just compensation. Such an act constitutes the basis of a "claim," clearly within the meaning and intent of the convention constituting this Commission.

In addition to the foregoing it may be said the presence of article 12 in the Rudloff contract is obviously due to the constitutional and legislative provisions requiring it. The protocol, which is the fundamental law of this tribunal, however, provides that—

The commissioners, or in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature or the provisions of local legislation.

I am of the opinion that this claim is within the jurisdiction of this Commission, and that its careful examination and impartial decision constitute a solemn duty which the Commission can not with propriety either evade or ignore.

The United States and Venzuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Sofia Ida Wiskow de Rudloff and Frederick William Rudloff, claimants,	} No. 41.
v.	
THE REPUBLIC OF VENEZUELA.	

Doctor PAÚL, *Commissioner*:

The honorable agent for the United States verbally presented to this Commission a memorial signed by Sofia Ida Wiskow de Rudloff and Frederick W. Rudloff, citizens of the United States and heirs of Henry Frederick Rudloff, deceased, in which memorial said heirs claim from the Republic of Venezuela the payment of the sum of 3,698,801 bolivars with interest, for the loss of capital and damages caused by the abrogation of certain contract made between said Henry Frederick

Rudloff and the minister of public works and the mayor of the Federal District, published in the *Official Gazette*, No. 5717, of February 8, 1893, which contract had for its object the construction of a new market building in the San Jacinto square, this city.

The honorable agent for Venezuela, in his reply to the above-mentioned memorial, presented to this Commission, as a previous and special question to be decided, the exception against jurisdiction based on the following reasons:

That on May 8, 1901, the same claimants, represented by Dr. Ascanio Negretti, sued the Venezuelan Government before the federal court for the payment of the same amount and on the same basis that they now present to this Commission.

That the claimants having chosen the jurisdiction of the federal court and submitted themselves to its decision, it is evident that they also accepted the dominion of the local legislation, substantive as well as adjective, in connection with the action brought by them against the Government of Venezuela, with the special circumstance that, by article 12 of the contract presented as evidence by the claimant, the contracting party agreed that "all doubts and disputes arising by reason of said contract should be decided by the tribunals of the Republic and said disputes could never give reason for international reclamations."

That the hall of the first instance of the federal court having taken cognizance of and decided the said action and both parties having appealed from its decision, the same federal court in its hall of the second instance, has this matter under its judicial notice at the present time; and Venezuela—that is to say, the defendant party—not having consented to the withdrawal of the suit from the jurisdiction of that high tribunal, in order to have it submitted to this Commission, the latter consequently lacks jurisdiction; and finally, that the case of denial of justice could not be alleged, since not only has the court of the second instance not yet given a judgment that could cause definite execution in the case, but the decision rendered by the first instance of the federal court was favorable to the claimants.

The question of jurisdiction in this case evidently is a matter of interpretation of the terms of the first article of the protocol, dated February 17, 1903, signed at Washington by the Secretary of State of the United States of America and the plenipotentiary of Venezuela, that had for its object to submit to arbitration all the claims, not settled, owned by citizens of the United States against the Republic of Venezuela.

The exact terms of said article are as follows:

All claims owned by citizens of the United States of America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments and which shall have been presented to the Commission hereinafter named, by the Department of State or its legation at Caracas, shall be examined and decided by a mixed commission which shall sit at Caracas, etc.

The general terms in which this article defines the jurisdiction of this tribunal are apt to be interpretative in such a way that the scope of the faculty intended to be given to the Commission comprised all claims owned by citizens of the United States against the Republic of Venezuela that had been the object of diplomatic correspondence between the two Governments without having reached a final settlement, or that were unknown to both Governments; but this amplitude

of jurisdictional scope does not in any way interfere with the principles of common law and sane logic, which naturally exclude, because of nature and peculiar circumstances, certain questions or pretensions of those parties that consider themselves entitled to claim from the Republic of Venezuela, from being presented, examined, or decided by this Commission. For instance, the above-mentioned article does categorically state that those questions or claims of citizens of the United States against the Republic of Venezuela that had already been submitted to the ordinary tribunals of the country and had been the object of definite executory judgment, and against which there has not been invoked, as a basis for a new and different claim, a denial of justice or evident injustice, were excluded from the jurisdiction of this Commission, and notwithstanding that these claims could not be considered as settled by *diplomatic agreement or by arbitration between both Governments*, it is an indisputable fact that such questions or pretensions do not constitute a claim susceptible of submission to the examination and decision of this Commission.

In the meaning of the word "claim" it is indispensable to admit as a consubstantial element the idea of controversy between the Government of Venezuela and the claimant. That controversy, as in the present case, arises from a contract and has been submitted for its definite decision to the jurisdiction of a tribunal of the Republic, which, according to the laws of the country and by the special articles of the same contract, has full jurisdiction to decide whether or not there exist responsibilities and obligations in favor of either party; and the stage of the proceedings of the action in that case determines that it is not a claim of a government against another government to obtain satisfaction for damages caused to the interests of one of its citizens, but it enters upon that condition of every question which is the object of a civil action, in which concur all the elements and means accorded by the laws for the dilucidation and protection of the rights of both parties.

The Washington protocol could not have for its object the withdrawal from the decision of the tribunals of the Republic the judicial disputes that had been already submitted to them, when it is natural to suppose that it had no other object than to facilitate, by means of the Mixed Commission, the definitive decision of those claims that had been already object of diplomatic dissension between the two Governments and about which a settlement had not been reached by agreement or arbitration. The act of making nugatory the laws of the Republic which are a part of its constitutional statute in regard to contracts and in regard to the jurisdiction of its tribunals, thus opposing the terms of the express contractual conditions that oblige the parties to submit all questions arising from said contract to the courts of the country, without same ever becoming a cause for international claims, would have been a transgression on the legitimate powers with which the plenipotentiary of Venezuela was invested, which powers could never have made ineffectual the constitutional precepts established in the fundamental charter of 1901, that was in force at the date of the signing of the protocol. It is not, then, possible to admit an interpretation of the terms of said protocol that is not in perfect accordance with the fundamental basis of the national sovereignty exercised through its tribunals of justice and in accordance with the universal principles that establish as supreme law to the parties in

contracts and obligations the judicial ties established by themselves in the exercise of their free will and as a law to the contract.

It was in the exercise of this liberty; it was in the observance of the laws of the Republic, that were known to Sofia I. W. de Rudloff and Frederick Henry Rudloff, which laws they were obliged to comply with, as well as to the very special clause 12 of the said contract, on which they found their claim; and it was also in view thereof that the Department of State of the United States of America, who, under its constant rule of nonintervention in disputes arising from contracts between its citizens and foreign countries, until after having availed themselves of all the remedies which the laws of such country afforded for the protection of their rights, instructed the claimants to make use of their rights before the tribunals of Venezuela, and in accordance with those instructions said claimants presented to the federal court their demand for damages against the Government of Venezuela. While this action exists, and while all the remedies afforded by our laws in their various instances are not exhausted, and while there is not used as a basis of a claim the fact of denial of justice or evident injustice in the judicial proceedings and in the final judgment of the federal court, there does not exist any claim with reference to this matter that could be a subject for examination by this Commission.

It is true that the parties have the right, by article No. 216 of the code of civil proceedings, to desist from any action brought before a tribunal. The same article establishes that such desistance can not take place without the consent of the other party; and article 492 of the same code, quoted by the honorable agent for the United States in his reply, stipulates that when at any stage of the case the parties manifest that they have submitted themselves to the decision of umpires, the course of the action be suspended and the pleadings and proceedings be immediately delivered to the umpires, it reveals by its own terms that such a statement should be made explicit, and by both parties, before the tribunal where the action was pending, and by no means could such a manifestation be deducted from the more or less exact interpretation of the terms of the protocol. When the protocol was signed at Washington the said action was pending before the federal court, and had it been the intention of the Government of Venezuela, notwithstanding the conditions stated in the constitution of the Republic and the clause of the contract which is the cause of the demand, and the natural jurisdiction of a high court of the Republic in the action brought by the same plaintiffs, such an exception would have to have been the object of an especial statement in the terms of the protocol, as happened in the Venezuelan-Mexican protocol signed by the same plenipotentiary of Venezuela, Mr. Bowen, on the 26th day of the same month of February.

Said Venezuelan-Mexican protocol expressly states:

It is understood and agreed that if before the 1st of June, 1903, the Mexican claims above mentioned are arranged by agreement between the claimants and the Government of Venezuela, or decided in favor of said claimants by the high federal court of Venezuela, the same claims shall not be submitted to the arbitration provided for in the preceding articles.

This exception was caused by the circumstances that the representatives of the high contracting parties knew of the existence of the demand entered in action by the firm of Martinez del Rio & Bros. before the high federal court, and both representatives thought it

indispensable to specify a date and a condition that would contribute to fixing the jurisdiction of the Mixed Commission in the special case of the above-mentioned claim, it being in *limine litis* submitted for its decision to a court that fully exercised that jurisdiction, and which the parties could not avoid without an especial, express, and definite declaration.

For the above-stated reasons it is my opinion that while there exists a demand in action brought by the same claimant before the federal court for the same object mentioned in the memorial presented to this Commission, which judgment is still pending by reason of an appeal made by both parties to the hall of the second instance of the same court from the decision pronounced by the hall of the first instance, there does not properly exist a claim against the Government of Venezuela which could be submitted to the jurisdiction of this Commission by the Rudloff heirs, and consequently this Commission has absolutely no jurisdiction and ought to reject the pretension of the applicants.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Sofia Ida Wiskow de Rudloff and Freder- rick William Rudloff, claimants,	} Claim No. 41.
v.	
THE REPUBLIC OF VENEZUELA.	

INTERLOCUTORY DECISION ON JURISDICTION.

The UMPIRE:

A difference of opinion having arisen between the Commissioners of the United States of North America and of the United States of Venezuela about the question of jurisdiction in this case, this question was duly referred to the umpire for an interlocutory decision.

The umpire, having fully taken into consideration the protocol, and also the opinions and arguments of the Commissioners as well as the documents, evidence, and arguments, and likewise all the communications made by the two parties, and having impartially and carefully examined the same, has arrived at the following decision:

Whereas the protocol, whereupon solely and wholly rests the jurisdiction of this Commission, says that all claims owned by citizens of the United States of North America against the Republic of Venezuela which have not been settled by diplomatic agreement or by arbitration between the two Governments, and which shall have been presented to this Commission by the Department of State of the United States or its legation at Caracas shall be examined and decided by this Commission; and

Whereas claimants in the first place are citizens of the United States, and secondly, own a claim against the Republic of Venezuela, which claim has not been settled by diplomatic agreement or by arbitration between the two Governments, while, in the third place, it has been duly presented to this Commission by the Department of State of the United States through its agent, this claim certainly *prima facie* shows itself as standing under the jurisdiction of this Commission.

Now, whereas the Government of Venezuela, by its honorable agent, opposes that in article 12 of the contract entered into by the predecessor in interest of the claimants the parties stipulated that the doubts and controversies which might arise by reason of it should be decided by the tribunals of the Republic, it has to be considered that this stipulation by itself does not withdraw the claims based on this contract from the jurisdiction of this Commission, because it does not deprive it of any of the essential qualities that constitute the character which gives the right to appeal to this Commission; but that in such cases it has to be investigated as to every claim, whether by the fact of not fulfilling this condition and of claiming in another way, without first going to the tribunals of the Republic, does not inflict the claim with a *vitium proprium*, in consequence of which the absolute equity (which according to the protocol has to be the only basis of the decisions of this Commission) prohibits this Commission from giving the benefit of its jurisdiction (for as such it is regarded by the claimants) to a claim based on a contract by which this benefit was renounced, and thus absolving claimants from their obligations, while the enforcing of the obligations of the other party based on that same contract is precisely the aim of their claim; and

Whereas the existence of such a *vitium proprium* can only be the result of an examination of the claim in its details, the jurisdiction of the Commission as to the examination of the case is not impeached by the above-mentioned clause, leaving open for the decision of the Commission the question whether this clause, under circumstances sufficiently evidenced after investigation, forbids the Commission in absolute equity to give claimants the benefit of this jurisdiction as to the decision; wherefore, this argument does not seem conclusive against the jurisdiction of this Commission.

Whereas, furthermore, the Government of Venezuela, by its honorable agent, opposes that this same claim, being already the object of a suit before the federal court, it can not, in accordance with article 216 of the code of civil procedure, be withdrawn from the jurisdiction of that court without the consent of the opposite party, which consent is here failing, it has to be considered that

Whereas, even admitting the facts as stated by the Government of Venezuela, this argument does not seem to go against the provisions of the protocol, which states that the Commission shall decide all claims without regard to the provisions of local legislation, and which, at all events, does not except claims in litigation when it speaks about "all claims owned by citizens, etc." While it should be borne in mind that this protocol is the fundamental law for this Commission, and the only source of its jurisdiction, and in which way soever the provisions of the protocol might be discussed, in view of the principles of right—international as well as right in general—the adage should not be forgotten, "*dura lex sed lex*," and it must be remembered that this protocol, under which circumstances soever originated, is an agreement between two parties, and that the Commission whose whole jurisdiction is only founded on this agreement has certainly, above all, to apply the great rule, "*pacta servanda*" without which international as well as civil law would be a mere mockery; while, on the other hand, it has not to be forgotten that this Commission in the practice of its judicial powers may find that the absolute equity which, according to that same protocol has to be the only basis for its

decision, forces it to take into consideration whether conflict with the provisions of local legislation, as well as with previous agreements between parties, may inflict the claim with that vitium proprium, in consequence of which that same absolute equity prevents the Commission from making use of the jurisdiction as to the decision.

Whereas, therefore, the arguments opposed do not seem to impeach the *prima facie* arguments that speak for the jurisdiction of the Commission under the protocol, this jurisdiction has to be maintained, and the claim has to be submitted to it.

The United States and Venezuelan Claims Commission sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF OF Sofia Ida Wiskow de Rudloff and Frederick W. Rudloff, claimants,	} No. 41.
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BAINBRIDGE, *Commissioner*:

On the 1st day of February, 1893, a contract was entered into by and between the minister of public works and the governor of the Federal District, sufficiently authorized thereto by the Chief of the Executive Power, parties of the first part, and Henry F. Rudloff, civil engineer, a citizen of the United States of America, residing in Caracas, party of the second part, whereby:

Rudloff agreed to construct for his own account or through a company, either national or foreign, a building of iron and masonry, principally for a public market, on the place where then stood the market of "San Jacinto," including the park "El Venezolano," and the grounds and buildings annexed to said market. He was to construct the building for the market according to the plans presented by him to the minister of public works; he was to commence the work of construction eleven days after the signing of the contract, and to finish the work within two years; he was granted the buildings and grounds above referred to; he was to take exclusive charge of the management and collecting of the proceeds of the market, and the policing of the same from the day on which he commenced the work. The duration of the contract was to be eighteen years.

Rudloff agreed to pay to the municipality of Caracas the following sums: From the first to the fourth year, 75,000 bolivars per year, or for the four years 300,000 bolivars; and from the fifth to the eighteenth year 120,000 bolivars per year, or for the period of fourteen years the sum of 1,680,000 bolivars, a total for the eighteen years of 1,980,000 bolivars. Rudloff agreed to pay these sums to the municipality in daily payments of 205 bolivars and 50 centimos; he agreed to offer yearly at public auction the localities of the market, and the buildings with all its fixtures and utensils was to belong to the municipality, without the necessity of any legal transfer upon the expiration of the eighteen years; free entry through the custom-house at La Guaira was granted for all the materials, fixtures, and tools necessary for the construction of the market, and free use of water for the construction and for the use of the building; the enterprise was not to be subject

to any kind of taxes, ordinary or extraordinary, by whatever terms they may be denominated, during the term of the contract, and neither the National Government nor the municipality was to construct or allow to be constructed any other public market in Caracas. Article 12 of the contract provided that the doubts or controversies that may arise on account of the contract shall be decided by the competent tribunals of the Republic, in conformity with the laws, and shall not give reason for any international reclamation.

The foregoing contract was published in the Official Gazette, No. 5717, dated February 8, 1893.

On February 11, 1893, pursuant to the contract, the market of "San Jacinto," and the grounds and buildings appertaining thereto, were ceded and delivered to Rudloff by public functionaries thereunto authorized, and the work of construction of the new building was begun.

The evidence shows that on April 30, 1893, the governor of the Federal District entered Rudloff's office, took possession of his books and made an examination of them, contrary to the provisions of the constitution and laws of Venezuela. Against this unlawful act Rudloff protested to the minister of the interior on the following day.

The fifth article of the contract provided that Rudloff should take exclusive charge of the market and the policing of the same from the day on which he commenced work. Trouble arose with reference to this provision of the contract almost immediately, Rudloff contending that it meant simply that he was to see that the market was kept clean and in a sanitary condition, the municipality that Rudloff was to pay the salary and rations of the police guards detailed in the market. This controversy was finally referred to the Executive, who decided that Rudloff must pay, which, under protest, he did; whereupon the force of policemen at the market was largely increased.

On July 15 the governor of the Federal District personally ordered the workmen engaged upon the building to suspend the work, threatening with arrest anyone who dared to continue. Through his representative, Mr. Rudloff immediately protested to the minister of public works against the governor's action.

On September 9 the governor informed Mr. Rudloff that the municipal council at its last meeting had declared void the contract for the market, and that he would take possession the next day, as in fact he did take possession by armed force on September 10, 1893. The work which had been done by Rudloff was subsequently demolished.

On September 26, 1893, Rudloff addressed himself to the Government of the United States, through the Department of State, and presented his claim against the Government of Venezuela. In its reply, dated December 22, 1893, through the United States minister at Caracas, the Department of State was of the opinion that the action of the Venezuelan authorities was arbitrary and unjust; but the claimant was advised that before he could invoke the official intervention of the United States it should be made to appear that he had sought redress in the courts of Venezuela and that justice had been there denied him.

On May 8, 1901, the claimants, as successors in interest to Henry Rudloff, began suit against the Government of Venezuela in the chamber of first instance of the federal court. A decision was rendered on the 14th of February, 1903, favorable to the claimants, so far as the existence and validity of the contract and the liability of the Govern-

ment were concerned, but holding that the amount to be adjudged should be determined by the just estimate of experts, pursuant to the provision of the civil code. An appeal was taken from this decision by the parties litigant on the 16th of February, 1903.

In consequence of the protocol signed at Washington on February 17, 1903, for the submission to arbitration of all unsettled claims owned by citizens of the United States against the Republic of Venezuela, the claimants have presented their claim to this Commission.

Before proceeding to answer the claim upon its merits here, the learned counsel for Venezuela entered a plea to the jurisdiction of the Commission upon the following grounds:

First. That the action was still pending in the tribunals of the Republic.

Second. That article 12 of the contract stipulates that the doubts and controversies which might arise by reason of it should be decided by the local courts, and that the contract could never give rise to an international reclamation.

A difference of opinion existing between the Commissioners, the question of jurisdiction was duly submitted to the umpire, who, in an interlocutory decision, sustained the jurisdiction of the Commission to examine the claim.

Answering to the merits, the honorable agent for Venezuela denies the claim in all its parts for the following reasons:

First. Because the nation was not a party to the contract entered into by the predecessor in interest of the claimants.

Second. Because the acts which, they say, were committed in violation of such contract were done by municipal authorities.

Third. Because in federal republics municipalities are autonomous entities and juridical personalities, capable of contracting rights and obligations, and for whose acts, in the matter of contracts, the State can not be responsible.

Fourth. Because the damages claimed are, in the greater part, remote, unascertained, and indirect damages, for the recovery of which the civil law gives no right.

Fifth. Because the contractor violated the contract made with the municipality in the first place, disposing during the time when he was in charge of the market of the whole of its rents.

The objection that the National Government was not a party to the contract can hardly be sustained, in view of the fact that the contract itself shows that it was entered into by the minister of public works and the governor of the Federal District, sufficiently authorized by the Chief of the Executive Power. It is indeed contended that the extent of the national interest consisted in the cession of certain Government lands to the contractor Rudloff; but the general tenor of the agreement indicates the active participation of the Executive authority therein, granting the right of free entry of all materials and tools through the federal custom-house of La Guaira and the guarantee that neither the National Government nor the municipality would allow any other market to be constructed in Caracas.

It would seem that a sufficient answer to the first, as well as to the second and third objections raised by the Government of Venezuela, lies in the fact that the Federal District was not at the time of this contract an autonomous entity, but rather a political subdivision of the State directly subject to the Executive authority. The decision of

the chamber of first instance of the federal court is of course not conclusive upon the Commission, but upon this question of fact it may be cited as authoritative. The court says: "With reference to the authority which the Chief of the Executive Power of the nation had to enter by himself into the contract with Rudloff, it is unquestionable that it was sufficient, through the ample powers which it exercised by virtue of the triumph of the revolution of 1892, of which Gen. Joaquin Crespo was the chief, so that in signing the contract by the minister of public works and the governor of the Federal District, these functionaries were the simple agents of the Chief of the Republic who was at the same time, according to the federal system, the superior chief of the Federal District," and further, "that at the date of the signing of the contract the Federal District had no autonomy, the functions thereof being filled by the Chief of the Republic, who, by appointing discretionally the ministers, the governor of the Federal District, and the members of the executive council, made all these functionaries dependent on his authority, and therefore without any power to control his acts."

In view of the foregoing the responsibility of the National Government for the acts of the governor of the Federal District and of the municipal council is clear. It is equally clear that these acts were wrongful, arbitrary, and unjust. If any consideration of public policy required the abrogation of the Rudloff concession, the proper judicial proceedings should have been taken to that end, and in conformity with law. The seizure of Rudloff's books and correspondence, the imprisonment of his manager, the interference with his workmen, and other hostile acts were wholly unjustifiable and lawless. Moreover, it is not apparent by what right the National Government, acting through the governor of the Federal District, could annul the contract with Mr. Rudloff. The jurisprudence of civilized states and the principles of natural law do not allow one party to a contract to pass judgment upon the other, but guarantee to both the hearing and decision of a disinterested and impartial tribunal. These encroachments upon the legal rights of their predecessor in interest entitle the claimants herein to a just indemnification.

The claim is summarized as follows:

	Bolivars.
Estimated income from rentals, for eighteen years.....	8, 168, 500
Amount spent in construction and expense.....	78, 232
Amount paid for policemen's wages.....	8, 645
Damages to credit.....	800, 000
	<hr/> 8, 855, 377
Less cost of building, interest, maintenance, and payment of municipal rents, as per contract.....	5, 156, 576
• Total damages.....	<hr/> 3, 698, 801

The amount claimed is the sum of 3,698,801 bolivars, equivalent to the sum of \$711,307.90 in United States gold.

The learned counsel for Venezuela contends, not without reason, that the damages thus claimed are, in their greater part, remote, uncertain, and indirect.

The contract provided that Rudloff should have during the period of eighteen years therein designated the exclusive management and the collection of the proceeds of the market, and that he was to offer yearly at public auction the localities. It contained no agreement for

the payment to him by the Government or the municipality of any sum whatever. The adventure was on his part wholly speculative, and his income therefrom was dependent upon the sale of localities, the payment of the rentals by the lessees, the success or failure of his management, and other indeterminate contingencies. Under these circumstances any estimate of the pecuniary advantages derivable from the contract is necessarily conjectural. Damages to be recoverable must be shown with a reasonable degree of certainty, and can not be recovered for an uncertain loss. All that the claimants pretend to prove here, all, indeed, that from the nature of the case it is possible for them to prove, is that their predecessor in interest might have obtained the income claimed if the Government had not broken the contract. They are necessarily unable to prove with reasonable certainty that he could or would have obtained it. The case presented here is not that of the loss of the prospective profits of an established business; nor is it that of the loss of the ascertained profits derivable from a contract unperformed. It is simply that of the loss of the expected profits of a business venture wrongfully prevented of fulfillment by the defendant Government; and for these expected profits the claimants can not recover, because they are wholly unable to show that a profit would have been made. It is true the general rule of damages for the deprivation of real property is the value of its use—the rental value. But it has been held by respectable authority that when the defendant destroyed a building in course of construction by the plaintiff, the prospective profits which the plaintiff might have made by renting the building are not recoverable. (*Bingham v. Walla Walla*, 3 Wash., 68.) The damages claimed in this item are speculative and contingent, and can not form the basis of an award.

The claim for "loss of credit" is not supported by sufficient evidence and, indeed, the damages alleged in that respect, as involving the intervention of the will of the other parties, are too remote and consequential.

But it by no means follows from the foregoing considerations that these claimants are remediless. The evidence is perfectly clear that Rudloff possessed, in virtue of his contract, valuable property rights; that he entered upon the performance of the contract; acted in all matters relating thereto in conformity with its terms; invested upon the faith of it a considerable amount of capital, and was apparently ready and willing to comply fully with its obligations. The evidence is also clear that he was denied the protection of the law, was ruthlessly interfered with and harrassed, and finally, without a hearing or judicial procedure of any sort, was by force of arms deprived of his property and of the rights vested in him under the contract. These acts of hostility and oppression were committed by the constituted authorities of the Government and evidently in the execution of its plans. In the commission of this wrong against an alien resident, the Government of Venezuela must be held to have assumed the responsibility of making just reparation; and for the wrong thus committed against one of its citizens, the Government of the United States, on behalf of the claimants, is entitled to an award justly commensurate with the injuries sustained.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF
of Sofia Ida Wiskow de Rudloff and Freder-
ick William Rudloff, claimants,

v.

THE REPUBLIC OF VENEZUELA.

No. 41.

Doctor GRISANTI, *Commissioner*:

On the 1st of February, 1893, the minister of public works and the governor of the Federal District entered into a contract, sufficiently authorized therefor by the Chief of the Executive Power on one part, and on the other with Henry F. Rudloff, civil engineer, citizen of the United States of America, in virtue of which contract Rudloff undertook—

to construct on his own account or through a company, either national or foreign, a building of masonry and iron, principally for a public market, on the same place which is at present occupied by the market called San Jacinto, including the square called El Venezolano and the grounds and buildings adjoining the actual market, the properties of the municipality (or the Government). (art. 1.)

The building ought to have been constructed according to the three plans which the contractor had already presented to the minister of public works. (art. 2.)

Rudloff undertook to commence the construction of the building eleven days after signing the contract and to finish the work within the following two years of the same date, allowing him an extension of time of six months. (art. 3.)

The national Government and the city of Caracas granted to the contractor the buildings and the grounds mentioned in article 1 for the time fixed for the duration of the contract. (art. 4.)

The contractor should take exclusive charge of the management and collection of the proceeds of the market and management of the police of the same from the day of commencing the work. (art. 5.)

The duration of the contract was fixed for eighteen years, counting ten days after being signed. (art. 6.)

The contractor bound himself to pay the municipality of Caracas 1,980,000 bolivars during the eighteen years mentioned, as follows: From the first to the fourth year, inclusive, 75,000 bolivars per annum, and from the fifth to the eighteenth year 1,880,000 bolivars, at the rate of 5,000 bolivars fortnightly. (art. 7.)

It is evident that on February 11, 1893, Rudloff was placed in possession of the market of San Jacinto and other premises mentioned in article 1, and that on that same day he commenced the construction works.

On the 11th of the following May the governor of the Federal District demanded of Rudloff payment for the police which rendered services at the market, adducing therefor the referred to contract, said payment having been satisfied by Rudloff, compelled to it by the mentioned authority and having previously protested against the same.

In September, 1893, the governor of the Federal District submitted the mentioned contract entered into with Rudloff to the consideration

of the municipal council, and said corporation in an accord issued on the 8th of the month and year just mentioned resolved:

First, that the forementioned contract be declared void; second, that the governor be authorized to take possession forthwith of the market and organize it in conformity with the provisions of the ordinance of February 20, 1884, in force with regard to markets, and with the others agreeing therewith; third, to accord for the demolition of the works carried out in the Plaza de El Venezolano.

This resolution was complied with in all its parts; that is to say, the contract was annulled and the construction of works done by Rudloff was demolished.

The nonjurisdiction of the Commission was alleged by the honorable agent for Venezuela and held by the honorable Commissioner for Venezuela, Doctor Paúl, and the honorable umpire, in his decision of October 24, decided in favor of the jurisdiction of the Commission and consequently the case was submitted to it.

In view of the forementioned statement, perfectly in accordance with evincing documents and proved facts, the Venezuelan Commissioner proceeds to draw his conclusions.

The market is a work belonging to the municipality, but the National Executive appears as contracting it, represented by the minister of public works, together with the governor of the Federal District.

The municipal council of the Federal District had no right to annul of its own free will the referred to contract in the resolution of November 13, 1893, because, as the municipality was one of the contracting parties, it could not at the same time judge as to the validity or nullity of the same. To obtain said nullity the municipality should apply for a lawsuit to the competent tribunals.

The contract was not submitted to the National Congress in its regular sessions of 1894 for its approval or disapproval, as required by the constitution then in force, and required also by the one actually in force; but it is not just that said omission should be ascribed to the contractor, Rudloff, but to the National Executive, to whom the compliance of said formality corresponded.

It is evident that the Government of Venezuela owes the claimants an indemnification for having suddenly put a stop to a contract which their legator, Henry F. Rudloff, was carrying out; but the undersigned thinks that the amount they demand of 3,698,801 bolivars is exceedingly exaggerated, and he agrees to grant them an indemnification of \$75,745 United States gold.

United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of Sofia Ida Wiskow de Rudloff and Frederick W. Rudloff, claimants against the Republic of Venezuela, No. 41, the sum of seventy-five thousand seven hundred and forty-five dollars (\$75,745.00) in United States gold is hereby awarded in favor of said claimants, which sum shall be paid by the Government of Venezuela to the Government of the United

States of America, in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States.

CARLOS F. GRISANTI,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

EDUARDO CALCANO LANAOSIA,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered November 4, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George Crowther, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 42.
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BRIEF ON BEHALF OF THE UNITED STATES.

I.

STATEMENT OF FACT.

The United States presents in this case the claim of George Crowther, a native-born citizen, for the sum of 10,220 bolivars for the loss of furniture, fittings, and apparatus contained in his dental office at Barquisimeto, and for a further sum to be determined for the loss of sealed papers, stamps, medals, and coins which had been collected for many years by the claimants. The claimant requests that the value of such sealed papers, stamps, medals, and coins shall be determined by a committee of experts to be appointed by this honorable Commission.

The claimant had been established in his profession at Barquisimeto during a period of seven years, and had equipped his office with all of the necessary furniture, materials, and appliances for the conduct of his professional work.

In the month of June, 1902, the forces of the Government of Venezuela, under the command of Gen. Santiago Briceño, took possession of that portion of the town where the claimant's office was located, and during such occupation carried off or destroyed all of the furniture, dental materials, instruments, and tools contained in the office of the claimant. The collection of stamps, medals, coins, and sealed papers belonging to the claimant was also taken or destroyed by the Government troops.

The claimant has made oath that the value of the contents of the office was 10,220 bolivars. He has also made a sworn list of the

medals, coins, sealed papers, and stamps, but, inasmuch as he had been collecting for a period of twenty years, he does not make any statement as to the value of this collection, as it might appear to be exaggerated, and therefore leaves the value to be ascertained by a committee of experts to be appointed by this honorable Commission.

II.

The facts in this case are amply supported in every detail, not only by the sworn memorial, but by the proceedings taken before the proper authorities.

The evidence clearly shows that the property was destroyed or carried off by the Government troops under the command of General Briceño. This evidence consists in proceedings had in accordance with the requirements of Venezuelan law, at which the representative of Venezuela appeared, and there can be no question as to the sufficiency of the proof.

III.

The Government of Venezuela is clearly liable for the wrongs complained of done by its military authorities.

There can be no question, as a matter of international law, that the Government of Venezuela is responsible for the destruction and loss of the property of the claimant.

See the opinion of the Chilean Claims Commission in the case of W. S. Shrigley, in the fourth volume of Moore's International Arbitrations, page 3711. The facts in this case were that during the civil war in Chile in 1891 the claimant, a citizen of the United States, removed his family from his residence at Miramar, leaving the house in the charge of his servants. Subsequently certain troops of the Government, under the command of their officers, occupied the premises and despoiled and carried away property to a considerable amount. The horses of the Government regiment were quartered in the garden and park, and the trees, plants, and fences were destroyed and the house completely sacked. The Commission unanimously rendered a decision in favor of the claimant.

See also the case of the estate of William E. Willet, in the fourth volume of Moore's International Arbitrations, at page 3743. In this case the Government forces of Venezuela took possession of a warehouse in Caracas, leased by Mr. Willet, an American citizen, and converted it into a place of defense, continuing in possession of it for several years, and destroying or consuming in the meantime everything of value in the building. The Commission made an award in favor of the claimant.

See also the case of Jean Jeannaud, in the third volume of Moore's International Arbitrations, at page 3000, where the claimant, a French citizen, demanded compensation for a quantity of cotton destroyed by the United States forces during the civil war. It was shown in this case that, after an engagement between the United States forces and the Confederates, and the retreat of the latter, the troops of the United States burned a ginhouse in which the cotton of the claimant was stored. The Commission held that the claimant was entitled to compensation for his losses and made an award accordingly.

IV.

An award should be made to the claimant of 10,220 bolivars, and such further amount as may be determined by a committee to be appointed.

The evidence, as we have already stated, clearly shows the loss of the contents of the office of the claimant and of his collections. The claim is, under the circumstances, moderate, fair, and just, and we submit, therefore, that an award should be made for the entire claim.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

GEORGE CROWTHER
v.
VENEZUELA.

[Translation.]

} Claim No. 42.

ANSWER.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of Venezuela, has studied the claim presented by George Crowther, and respectfully informs the tribunal.

The present claim arises from the loss of professional instruments of the claimant, and of a collection of medals, coins, stamps, and papers which he says he owned, and which was caused by the attack upon the city of Barquisimeto by revolutionary forces during the month of June of last year.

The claimant himself affirms that the house where he had his dental office located was occupied by a part of the Government forces which defended the locality against an imminent and inevitable attack.

At the same time that there is shown by the same statement of facts the duty under which the military chief acted in adopting the measures he did adopt, the manifest imprudence of the claimant in having left the articles whose value he claims to the disposition of the soldiers appears. It can not be supposed that the occupation of the house where he had his office located was so sudden that it did not permit him to secure his properties; besides, upon this point the claimant has not produced any proof.

The undersigned considers that the proof of the loss of the professional instruments, furniture, and apparatus is deficient because their number and kind have not been specified, necessary considerations to determine the real amount of the claim.

In respect to the collections which the claimant owned, there are no data in the documents by means of which they can be justly valued. The simple affirmation of the interested party can not be taken into account in order to prove their existence. The photographs exhibited lack the authenticity required to constitute clear proof, and it would be very venturesome, to say the least, to base on them a favorable finding in the claim.

The undersigned does not wish to put the good faith of the claimant in doubt, but to warn the Commission concerning the results, which in most cases are unjust, to which the admission of such proofs might give rise.

Therefore, the undersigned considers that the tribunal ought to disallow the claim arising from the loss of the furniture and professional instruments, as occasioned by the claimant's own imprudence, and the claim arising out of the loss of the collection on account of the want of all data which would justify the demand.

Caracas, 25th July, 1903.

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of George Crowther, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 42.
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DECISION AND AWARD.

By the COMMISSION:

The Commission awards to the claimant the sum of \$3,138.75 United States gold.

OCTOBER 13, 1903.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of George Crowther, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 42.
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By the COMMISSION:

The memorialist states that for a number of years he has been established in the practice of his profession of a dentist at Barquisimeto, Venezuela, where he had equipped his office with all the necessary furniture, appliances, and materials for the conduct of his professional work; that about the middle of January, 1902, the Government troops under the command of Gen. Santiago Briceño, took possession of that part of the town where his (claimant's) office was located, and during such occupation carried off or destroyed all of the furniture, dental materials, instruments, and tools belonging to the claimant, the value of said property being the sum of 10,220 bolivars. In addition to this loss, the claimant asserts that for many years he had been a collector of medals, rare coins, sealed paper, and stamps, and that his collection, which was of great value, was also taken away or destroyed. The claimant does not make any estimate of the value of his collection, but leaves the same to be ascertained by the Commission.

The documentary evidence presented is deemed sufficient as to the fact of claimant's loss, and that it was occasioned in such a way as to establish a liability therefor upon the Venezuelan Government. The valuation placed upon the furniture and office equipment seems just and reasonable, and is allowed in full. The sum of \$1,000 is allowed for the collection.

An award will therefore be made herein in the sum of \$3,000, with interest on said sum at the rate of 3 per cent per annum from June 15, 1902, to December 31, 1903, the anticipated date of the final award by the Commission.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of George Crowther, claimant, *v.* the Republic of Venezuela, No. 42, the sum of three thousand one hundred thirty-eight 75/100 dollars (\$3,138.75) in United States gold is hereby awarded in favor of said claimant, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

RUDOLPH DODGE,
Secretary on the part of the United States of America.

J. PADRÓN UZTARIZ,
Secretary on the part of Venezuela.

Delivered October 15, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George W. Upton, claimant, <i>v.</i> THE REPUBLIC OF VENEZUELA.	}	No. 43.
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This claim was presented to the Commission on the memorial of the claimant, and was supported at the time of presentation by the agent of the United States in an oral argument. A brief was filed by the agent of Venezuela in answer and a brief was filed by the agent of the United States in replication.

[Translation.]

GEORGE W. UPTON <i>v.</i> VENEZUELA.	}	Claim No. 43.
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ANSWER.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of Venezuela, has studied the claim presented by Messrs. Carlos Urrutia and Ascanio Negretti, who call themselves the substituted attorneys of the American citizen George W. Upton, and respectfully informs the tribunal:

(1) In the first place, the undersigned should call attention to the fact that among the documents produced with the claim and which have been presented to him, the power which legitimizes the representation of the above-named lawyers, does not appear; since, in order to represent the rights of a third party before this honorable Commission, a special power is necessary, because it is, beyond doubt, an exceptional tribunal, and that which is ordinarily conferred to act judicially and extrajudicially concerning such rights, would not be sufficient. If the one which said lawyers have produced is couched in said general terms, the undersigned will thenceforth contest the want of power or representation for the prosecution of the suit.

(2) The claim arises out of alleged damages suffered by the constituent of the attorneys and which they deduce from the nonperformance of a contract which is said to have been made by the former with the Government of Venezuela for the establishment of a mortgage bank. No proof whatever is furnished of the existence of such an agreement; only private letters of some public officials are produced from the text of which they pretend to derive it without any reasonable foundation. It is evident that a contract of the nature and importance of the one which is set up could not be proven, except by the presentation of the formal document. It is not believed, on the other hand, that the interested party would have commenced his operations and carried them to the point to which they are said to have been brought, without counting upon a guarantee that would protect him from every accident or contingency. No proof whatever exists in the papers upon which the responsibility of the Government can be founded. If really Mr. Upton was carrying on negotiations with it, and performed all the acts set forth in the memorial and incurred all the sums claimed in expenses, it is to be supposed that he did so at his own risk and with a view to assuring the negotiation.

The claim ought to be rejected because it is unfounded.

Caracas, July 31, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF	} No. 43.
of George W. Upton, claimant,	
v.	
THE REPUBLIC OF VENEZUELA.	

REPLICATION ON BEHALF OF THE UNITED STATES.

The United States of America has presented in this matter a claim on behalf of George W. Upton, a citizen of the United States, amounting to 525,000 bolivars, arising out of the failure of the Government of Venezuela to carry out a contract made with the claimant for the establishment of a mortgage bank. Mr. Upton originally entered into negotiations with the Republic of Venezuela, represented by Gen. Ignacio Andrade, and, having received certain promises from him and other officials, went to the United States to interest capitalists to assist him in carrying out his project. In this respect he was successful, as

appears by the agreement of Messrs. Mansur, Wilkins & Burdette, herewith submitted, as well as from the numerous letters and telegrams which are also placed in evidence. Mr. Upton, having advised the Government of Venezuela of the success of his negotiations in the United States, received official word from J. Calcaño Mathieu, minister of foreign affairs, that he should authorize some person resident in Caracas to execute the necessary contract. In accordance with this suggestion Mr. Upton authorized Gen. José Rafael Ricart to sign the necessary contract on his behalf. This contract, which was entered into by Ramon Tello Mendoza, minister of hacienda, and José Rafael Ricart, on December 8, 1899, and a copy of which has already been submitted in evidence, was delivered to the Government of Venezuela. Mr. Upton and his representative, General Ricart, sought to obtain a copy of the contract, but they were unable to do so. The capitalists whom Mr. Upton had interested in the enterprise would not carry out their part of the agreement until the contract was exhibited to them. Mr. Upton being unable to produce the contract, the entire negotiations, which had entailed much expense on the part of the claimant, fell through, and, in consequence, this claim is now made.

I.

In the answer of Venezuela to this claim objection is made to its presentation by Messrs. Carlos Urrutia and Ascanio Negretti, the substituted attorneys of the claimant, on the ground that the power is general in its nature and that a special power is necessary to present this claim before this Commission.

In reply to this we respectfully call the attention of the Commission to Article II of the protocol, which provides that the Commission shall be bound to receive and consider all written documents or statements which may be presented to it by or on behalf of the respective Governments in support of or in answer to any claim. This claim has been presented to this honorable Commission on behalf of the United States and the technical question of the scope of the power of the attorneys of the claimant can not be raised.

II.

It is contended in the answer of Venezuela that no proof whatever is furnished of the existence of the contract between the claimant and the Government of Venezuela.

In reply thereto an affidavit of Gen. José Rafael Ricart, who signed the original contract with the Government of Venezuela on behalf of the claimant, is herewith submitted in evidence. In this affidavit General Ricart declares that he executed the contract which has already been placed before this honorable Commission on the 8th day of December, 1899, in the name of Mr. Upton; that the contract was also signed by Ramon Tello Mendoza, the minister of hacienda, acting for the Government, and that this contract was signed and sealed in accordance with the requirements of Venezuelan law. This affidavit is the best possible proof that can be submitted to this Commission in the absence of the original contract. In addition, the correspondence which has already been placed before this tribunal and that which is also submitted herewith bears out all of the circumstances of this claim and the damages suffered by the claimant.

III.

An award should be made for the amount of this claim.
Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George W. Upton, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 43.
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Doctor PAÚL, *Commissioner*:

This claim is presented on behalf of George W. Upton, a citizen of the United States, demanding from the Government of Venezuela the payment of the sum of 525,000 bolivars for expenditures, voyages, publications, commissions, attorney's fees, probable earnings not realized, damages, and other expenses incurred by George W. Upton in his exertions to obtain from the Government of Venezuela, and the ratification by Congress, a contract to establish the mortgage bank that Mr. Upton was endeavoring to organize in this city with a large capital to make long-term loans at very low rates of interest; to coin 2,000,000 bolivars in silver, and to put the bank in a position to contract for the silver coinage in such a manner that it would not affect the price of the circulating silver, thus preventing serious differences in the exchange.

From the letters and private notes presented as evidence in this claim it only appears that Mr. Upton came to hope that he could establish a mortgage bank in this country, having as a basis only the mere official promise made him by a secretary of the Andrade government that as soon as Congress would authorize the coinage of 2,000,000 bolivars in silver the said coinage would be made through the so-called "Bolivar National Bank," which Upton is said to have already organized in Boston with a Mr. Mauser. There is no proof that there had ever been made by the Government of Venezuela a contract that was to be approved by the Congress of the Republic for the organization of the said "mortgage bank," and still less that any steps had ever been taken by the Government of Venezuela to consider as probable the hypothetical banking plans and schemes referred to by the claimant. This imaginary structure of subscribed millions for capital of the "Bolivar National Bank," the going and back trips of Mr. Upton, the cablegrams to General Ricart, the letters and postal cards, are only a mess very similar to the Crawford will and to the millions deposited in the Humbert's iron safe. Neither the Crawfords nor the millions have ever appeared; so with the capital of the Bolivar National Bank, subscribed to in Boston, and the contract made with the Government of Venezuela for the establishment of the bank, give any sign of existence.

This claim must be disallowed.

The United States and Venezuelan Claims Commission, sitting at Caracas, Venezuela.

DECISION.

THE UNITED STATES OF AMERICA ON BEHALF
of George W. Upton, claimant,
v.
THE REPUBLIC OF VENEZUELA. } No. 43.

The above-entitled claim is hereby disallowed.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered September 29, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF
of Pedro Miguel Parés, claimant,
v.
THE REPUBLIC OF VENEZUELA. } No. 44.

This claim was presented to the Commission on the memorial of the claimant, and the agent of the United States made an oral argument in support of it. A brief in answer was filed by the agent of Venezuela.

[Translation.]

PEDRO MIGUEL PARÉS }
v. } Claim No. 44.
VENEZUELA. }

ANSWER.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of Venezuela, has studied the claim presented by Pedro Miguel Parés, and respectfully inform this tribunal:

I.

The present claim arises out of damages suffered by the claimant in various properties which he enumerates, situated in the State of Barcelona, caused by the forces of the Government and the revolution during the last civil war. In the first place it is to be observed that the damages attributed to the constitutional forces are not specifically set forth, an indispensable condition to establish the responsibility of the Government, since, according to the principles of international

law, the latter is not obliged to make reparation for damages which may have been caused by the factions which had taken up arms against their legitimate government.

II.

Nor is the American nationality of the claimant properly proven, a requisite which is indispensable for the admission of his demand before this honorable tribunal. According to section 7 of the law passed by the Congress of the United States on the 12th of April, 1900, which fixed the status of the natives of the island of Porto Rico (among which the claimant is found)—

All the inhabitants who may continue to reside there, and who were Spanish subjects on the 11th of April, 1899, then residing in Porto Rico, and their children born there subsequently, shall be held to be citizens of the United States, and as such entitled to the protection of it, except those who have desired to preserve their loyalty to the Crown of Spain on or before the 11th day of April, 1900.

So that, therefore, according to the law which has just been cited, two conditions are necessary in order that the natives in the island of Porto Rico may be able to acquire American nationality:

First, that they should have resided in said island on the 11th of April, 1899, and second, that they should have continued residing there after said date; and as in the case under consideration it appears from the proofs that the claimant resided in Venezuela, with his domicile in the State of Barcelona, since the year 1895, as is evidenced by the passport exhibited, he can not invoke the protection of the United States, since he is not a citizen thereof, nor has he produced any proof that thereafter he acquired such nationality.

Therefore the claim ought to be disallowed for the reasons set forth.
Caracas, August 4, 1903.

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Pedro Miguel Parés, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 44.
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DECISION.

By the COMMISSION:

The Commission dismisses the claim without prejudice, for want of jurisdiction.

Delivered October 9, 1903.

The United States and Venezuelan Commission, sitting at Caracas,
Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Pedro Miguel Parés, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 44.
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By the COMMISSION:

The evidence shows that the claimant herein is a native of the island of Porto Rico. His own testimony and that of various witnesses is to

the effect that he has resided in Venezuela for a long period of years. A passport was issued to him as "a subject of Spain" by the Spanish legation at Caracas on December 2, 1895, good for one year. On the back of this passport is the following:

Registered in the legation of the United States at Caracas, Venezuela, Dec. 19, 1901.

WILLIAM W. RUSSELL,
U. S. Secy. of Legation.

The act of Congress of April 12, 1900, "to provide revenues and a civil government for Porto Rico, and for other purposes," contains the following provision:

Sec. 7. That all inhabitants continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Porto Rico, and their children being born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the eleventh day of April, nineteen hundred, in accordance with the provisions of the treaty of peace between the United States and Spain on the eleventh day of April, eighteen hundred and ninety-nine, etc.

The memorial does not state facts sufficient to bring the claim within the provisions of this act or to show that the claim is one owned by a citizen of the United States within the terms of the convention constituting this Commission. It must therefore be dismissed without prejudice, for want of jurisdiction.

The United States and Venezuela Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Pedro Miguel Parós, claimant,	} No. 44.
v.	
THE REPUBLIC OF VENEZUELA.	

DECISION.

The above-entitled claim is hereby dismissed without prejudice for want of jurisdiction.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to award:

HARRY BARGE, *President.*

Attest:

J. PADRON UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered October 9, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George Turnbull, claimant, v. THE REPUBLIC OF VENEZUELA.	} No. 45.

and

THE UNITED STATES OF AMERICA ON BEHALF of the Manoa Company, Limited, claimant, v. THE REPUBLIC OF VENEZUELA.	} No. 46.

and

THE UNITED STATES OF AMERICA ON BEHALF of the Orinoco Company, Limited, claimant, v. THE REPUBLIC OF VENEZUELA.	} No. 47.

In the above-entitled matters there were three distinct claims arising out of a series of acts on the part of the Government of Venezuela, which had caused injury to each one of the claimants individually and had caused a serious conflict of interest among them.

These claims were presented to the Commission separately but they were joined by Venezuela in the answer, and the Commission considered them together.

Because of the conflict between these claimants the agent of the United States found himself in a position where to urge each claim specifically would be in each instance to, more or less, antagonize the other two. It was, however, apparent that this conflict of interests had arisen out of the tortuous course of the Government of Venezuela, and the agent of the United States in a general argument upon these three claims contended that damages should be awarded to the respective claimants for the amount of loss actually occasioned them as a consequence of the conduct of the Government.

The specific details of the damages and injuries were set forth in the memorial in each of the cases in great detail. These memorials and the evidence submitted with them, however, did not present a complete or systematic arrangement of the acts of the Government of Venezuela which were complained of, and in order that the interests of these citizens of the United States should be fully conserved the agent of the United States, after much arduous search in the *Recopilación de Leyes y Decretos de Venezuela*, the files of the *Gaceta Oficial*, the public records, and the archives of departments, was enabled to prepare the following synopsis upon which his oral argument to the Commission was based:

SYNOPSIS OF ACTS OF THE GOVERNMENT OF VENEZUELA IN RELATION TO THESE CLAIMANTS.

On September 22, 1883, the Government of Venezuela granted to C. C. Fitzgerald, his associates, assigns, and successors, for the term

of ninety-nine years a concession of a certain portion of the delta of the Orinoco, with the exclusive right to develop the resources of the territory granted, which was national property. The grantee was given the exclusive right of establishing a colony for the purpose of exploiting the mineral and agricultural resources and for the development of industries and manufactures. The Government agreed to establish two ports of entry within the territory granted. It was provided in the contract that Fitzgerald should commence the work of colonization within six months from the approval of the concession by the federal council; that he should establish a system of immigration, promote civilization, open necessary ways of communication, and arrange that the company of colonization should formulate its statutes and establish its management in conformity with the laws of Venezuela. There were favorable provisions in the contract regarding taxation. The Government agreed to organize the political, administrative, and judicial system of the colony and to provide an armed force necessary for the maintenance of public order. All residents of the colony were exempted from military service and from the payment of imposts or taxes, local or national, on the industries in which they might be engaged for a period of twenty years. An extension of six months was provided for to enable the concessionary to carry out his part of the agreement in the event that it should become necessary. This contract was approved by Congress May 27, 1884. (See Vol. XI, *Recopilación de Leyes y Decretos de Venezuela*, p. 93, decree No. 2631.)

On June 14, 1884, Mr. Fitzgerald conveyed to the Manoa Company, Limited, the entire concession, with all his rights thereunder. It had become necessary to obtain the six months' extension provided for in the contract, and this was granted on February 19, 1884, to date from the 22d of March following. In the following August an expedition was sent out by the Manoa Company, Limited, which commenced operations, as certified to on the 24th of September by the national fiscal supervisor and acting governor of the territory as being in performance of the contract, in accordance with its stipulations.

On July 23, 1884, the Executive and the federal council of Venezuela decreed an organic law establishing the federal territory "Delta." (See Vol. XI, *R. de L. y Dec. de Ven.*, p. 204, decree No. 2691.)

On July 28, 1884, the Executive and the federal council decreed the establishment of customs at Pedernales and Manoa, with their respective custom-houses in the federal territory "Delta." (See Vol. XI, *R. de L. y Dec. de Ven.*, p. 209, decree No. 2691 (A), and resolution No. 2691 (B).)

On October 1, 1884, the custom-house at Manoa was temporarily suppressed by a decree of the Executive and the federal council. (See Vol. XI, *R. de L. y Dec. de Ven.*, p. 210, decree No. 2691 (C).) This custom-house was evidently reinstated at some subsequent date or else combined with the Pedernales custom-house, as indicated by the certificates of M. Rivero Escudera, intendente de hacienda, July 10, 1888, and December 20, 1890, hereinafter referred to. It is stated in the memorial of Mr. Turnbull that the Government withdrew the official in charge of this custom-house in 1893.

On October 7, 1884, the federal executive decreed that the company had perfect right, in accordance with the concession, to exploit the

products which were to be found within the limits of the lands comprised in the concession.

In 1885 Commissioner McTurk, representing the Government of Great Britain, entered upon this concession and took possession of it in the name of his Government. The territory comprised in the Fitzgerald concession formed a portion of the Venezuelan territory, the ownership of which was disputed by Great Britain.

On June 11, 1885, the federal executive decreed that the lapse of time from the 1st of September, 1884, to that date, provided in the original contract with Mr. Fitzgerald, should not be construed against the contractor. (See Vol. XII, R. de L. y Dec. de Ven., p. 360, resolution No. 3068.)

On January 1, 1886, a contract was entered into between Gen. Guzman Blanco, the minister of Venezuela in Europe, and George Turnbull, executed in Nice, France, by which Turnbull was granted the concession which had originally been given to Fitzgerald.

On September 9, 1886, by resolution of the Executive and the federal council, the Fitzgerald contract was declared insubsistent and no longer in force because the concessionary had not carried out the provisions of the contract within the time prescribed. (See *Gaceta Oficial*, No. 3852, September 11, 1886.)

On September 10, 1886, the contract with Turnbull was ratified by resolution of the Executive and the federal council. (See *Gaceta Oficial*, No. 3852.)

On April 28, 1887, Congress decreed the approval of the contract of January 1, 1886, between the federal executive and George Turnbull. (See *Gaceta Oficial*, No. 4048.)

On June 10, 1887, the minister of fomento wrote officially to Mr. Turnbull, acknowledging receipt of a communication from him in which was supplied a list of 120 names of immigrants and expressing the satisfaction of the Government with the information that immigration had begun to take place upon the concession granted to Turnbull. (See *Gaceta Oficial*, No. 4072.)

On October 30, 1887, Manuel Carias, the governor of the territory "Delta," by official resolution issued a provisory title to George Turnbull in the ownership of the iron mine "Imataca." (See *Gaceta Oficial*, No. 4243.)

On November 29, 1887, the Executive and the federal council authorized the governor of the federal territory "Delta" to admit the request of George Turnbull to purchase 500 hectares of national lands ("Imataca"). (See Vol. XIV, R. de L. y Dec. de Ven., p. 27, resolution No. 4008.)

On March 13, 1888, by resolution of the Executive and the federal council it was declared that the iron mine "Imataca," located within the 500 hectares of public land on the shore of the Caño Corosimo which George Turnbull had purchased, should constitute a property apart from the concession which had been granted to said Turnbull. (Vol. XIV, R. de L. y Dec. de Ven., p. 81, resolution No. 4043.)

On March 13, 1888, the President of the Republic and the federal council approved the definitive title of George Turnbull in the iron mine "Imataca" for a period of ninety-nine years. (See records of ministerio de fomento, Caracas, March 13, 1888.)

On March 13, 1888, Turnbull recorded the definitive grant of the Imataca mine in Caracas. This record shows a valuable consideration.

(See Office of the Register, Caracas, under No. 165, Record 1, vol. 1, 1888.)

On the same day there was filed in the ministerio de fomento a resolution to the effect that the Executive and the federal council declared that this mine and the lands comprised within the grant constituted a property apart from the concession to Turnbull under the contract entered into on the 1st of January, 1886, and that consequently it should not be submitted to the conditions and obligations set forth in said contract.

On July 10, 1888, M. Rivero Escudero, intendente de hacienda, in the custom-house of Manoa, certified that the iron mine known as "Imataca," situated within that jurisdiction, belonging to George Turnbull, had been worked, tunnels and galleries constructed, and 3,000 tons of ore mined; that houses had been built for the laborers; that 60 laborers, two-thirds of them from foreign countries, were employed; that a tramway had been established to the port and a steam launch put in service for the necessities of the colony, and that considerable ore had been exported to New York.

(On December 20, 1890, the same intendente de hacienda certified that the mine was being elaborately developed, and that the ore continued to be shipped to New York.)

On June 28, 1888, a resolution of the Executive with the vote of the federal council issued to George Turnbull a definitive title, for ninety-nine years, for an asphalt mine discovered by Turnbull in the district Guzman Blanco, within the federal territory "Delta," on the margin of Pedernales Canal on Pedernales Island, a provisional title for this property having previously been issued by the governor of the territory. (See records ministerio de fomento, direccion de riqueza territorial.)

This grant was recorded in the Office of the Register in the federal territory "Delta," and this is confirmed by the certificate of Hermogenes Lopez at the Federal Palace in Caracas, June 30, 1888.

On October 3, 1888, the Executive and the federal council declared the adjudication of sale to George Turnbull of this asphalt mine for a valuable consideration. Record of this is to be found in the Office of the Register in Caracas, under No. 33, Record 10, Book 20, third quarter 40, 1888.

By a letter of December 5, 1889, dated Pedernales, Carlos Rivero Escudero advised the minister of fomento that George Turnbull was developing the asphalt mine, having fully equipped it, and that by the statement of the superintendent of the company 460,000 kilograms of asphalt had been exported, and that there were in deposit 138,000.

In the records of the ministerio de fomento, page 45, 1890, is to be found the memorandum that George Turnbull was working this asphalt mine.

On May 28, 1895, the Manoa Company, Limited, petitioned the Government to acknowledge and reaffirm, by a decree, its rights and ownership to the entire Fitzgerald concession, including the Imataca mine.

On June 18, 1895, the Executive, the President of the Republic, declared the annulment of the contract for the concession granted to George Turnbull, and also declared the nullity and insubsistency of the grant of the Imataca mine for which definitive title was issued March 13, 1888, to George Turnbull, and also the concession of the

asphalt mine on the island of Pedernales, the definitive title of which was issued on June 28, 1888, on the ground that Turnbull during eight years had not complied with any of the provisions stipulated "excepting some steps taken for the exclusive benefit of his own convenience." (See *Gaceta Oficial*, No. 6433.)

On June 18, 1895, the Government issued a decree ratifying and reaffirming the old Fitzgerald grant in the Manoa Company, Limited, and authorizing said company to renew its work of exploitation and development. (See *Gaceta Oficial*, No. 6433.)

On July 10, 1895, an Executive resolution declared that the Manoa Company did not own the Pedernales asphalt mine, but states that the Minas de Pedernales Company, the successor of Turnbull, is its owner. (See *Gaceta Oficial*, No. 6451.)

On October 17, 1895, the Manoa Company, Limited, conveyed its entire grant, excepting the 500 hectares of land embracing the iron mine Imataca and the asphalt property on the island of Pedernales, to the Orinoco Company.

In 1895 the Orinoco Iron Syndicate Company, Limited, to which Turnbull had given an option to lease, sent representatives to the Imataca mine with the purpose of exploring it, but a fine was imposed upon the syndicate, the schooner *New Day*, chartered by the syndicate, and its cargo, for an alleged breach of the revenue laws, amounting to 249,785.17 bolivars. The Government authorities claimed that this fine was a valid lien against the Imataca mine, and declared that it must be sold. The Government also placed an official in charge of the property, who refused to surrender it except upon the order of the legal authorities.

On February 10, 1896, the Orinoco Company, Limited, succeeded by conveyance to all the right, title, and interest of the Manoa Company, Limited, except the iron and asphalt mines above mentioned.

On November 20, 1896, the national executive issued a resolution recognizing "as valid the transfer made by the Manoa Company, Limited, to the Orinoco Company, Limited, of all its rights and title to and in the aforesaid concession with the exception of the 'Imataca iron mine' * * * and the 500 acres of land comprising its superficial area, as well as the asphalt mine called 'Minas de Pedernales,' situated in the island of the same name, together with 200 hectares of public land destined for its exploitation."

The national executive also acknowledged as valid all the work and other acts of the Orinoco Company, Limited, done by it in the fulfillment of the terms of the resolution of June 18, 1895. (See *Gaceta Oficial*, No. 6877.)

On December 30, 1896, the Manoa Company, Limited, sold to the Orinoco Company, Limited, the Pedernales and Imataca mines.

On July 22, 1897, the Orinoco Company, Limited, entered into a contract with the Orinoco Iron Company by which was leased the entire iron deposits on the concession, including the Imataca mine.

On November 18, 1898, the officials of the Government of Venezuela conducted a public sale at Ciudad Bolivar of the Imataca mine and the Orinoco Company, Limited, became the purchaser of the Government's claim under the supposition that the mine had become the property of the Orinoco Iron Syndicate, Limited, which was the subject of the fine above referred to, and received a judgment granting all the rights of

the Orinoco Iron Syndicate Company, Limited, and the mine itself for 120,000 bolivars.

In 1899 Turnbull instituted judicial proceedings for the purpose of setting aside the sale of the Imataca mine which terminated on June 9, 1900, with the finding that the title of the Imataca mine was vested in Turnbull and that no other person had or possessed any right, title, or interest therein. (See *Gaceta Oficial*, No. 7958.)

On June 23, 1900, as appears by the document submitted in evidence by the honorable agent of Venezuela before this Commission, George Turnbull addressed the minister of fomento requesting that the Government declare invalid the resolution of June 18, 1895. In this petition Mr. Turnbull says:

The nullity of these two concessions having been declared and I being restored to the enjoyment of my legitimate rights, I shall not object in any way to making renunciation in favor of the nation of all the rights which I obtained by virtue of said contract of the 11th of May, 1887. This is the date of the execution of the contract at the federal palace in Caracas which was executed January 1, 1886, provided always that it shall protect me in the peaceful possession of my iron mine Imataca, granting me for that purpose all reasonable facilities.

On August 4, 1900, the agent of Turnbull was put in possession of the mine. In addition to putting Turnbull in possession of the mine, the Government established a custom-house upon the property. (See *Gaceta Oficial*, No. 7989.)

On October 10, 1900, the Supreme Chief of the Republic (the de facto President), by a resolution of that date, promulgated through the ministry of fomento, declared the Fitzgerald contract of September 22, 1883, on which the Orinoco Company, Limited, based its rights, insubsistent and annulled. (See *Gaceta Oficial*, No. 8053.)

On April 23, 1901, the Government of Venezuela definitely located the property of Turnbull in the Imataca mine, as appears by an official map, and promulgated the same by a decree to that effect. (See *Gaceta Oficial*, No. 8214.)

On May 14, 1901, the Government of Venezuela issued an abstract and certificate from the registry of the records, finding and certifying that the title to the property had been continuously—from the 13th of March, 1888, when the same was granted, until the 14th of May, 1901—vested solely in Turnbull.

On the 27th of May, 1901, the Government of Venezuela, desiring to grant relief to Turnbull, canceled and released all taxes imposed upon the Imataca mine during the time it was unlawfully withheld from him. (See *Gaceta*, No. 8240.)

[Translation.]

GEORGE TURNBULL, THE MANOA COMPANY, Limited, The Orinoco Company, Limited, v. THE REPUBLIC OF VENEZUELA.	} Nos. 45, 46, and 47.
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ANSWER.

Honorable Members of the Venezuelan-American Mixed Commission:

The agent of the Government of Venezuela has studied the claims presented by George Turnbull, the Manoa Company, Limited, and the

Orinoco Company, Limited, and since they all have a common origin, and as they follow the same order of facts, he has considered it well to answer them jointly, which he proceeds to do with all respect, in the following terms:

In the month of September, in the year 1883, the Government of Venezuela entered into a contract with Mr. C. C. Fitzgerald for the exploitation of the natural products of a certain extent of territory situated on the Delta of the Orinoco, it being stipulated by a special clause that the contractor should have started the work within the compulsory term of six months. Said term having expired, Fitzgerald asked and obtained from the Government for the object indicated an extension of six months more, during which he transferred the rights and obligations which had accrued to him by the said contract to a corporation called "Manoa Company, Limited," organized and constituted in the city of New York. The transfer was made with the consent of the Venezuelan Government.

Neither did the succeeding company commence the work within the period of grace accorded, as is evidence by the document which, marked with the letter A, is hereto annexed; nor did it fulfill any of the other obligations contracted in the original agreement, for which reason, in August, 1886, the Government, after refusing a new extension solicited by the concessionary company, declared the forfeiture of the concession.

By the pamphlet annexed to this answer, it is clearly proven that the Manoa Company was constituted with a fictitious capital and lacked every normal condition of existence. With respect to the right which the Government had to declare the forfeiture alluded to, it is beyond discussion that the concessionary company not having complied with the obligations which it contracted, it was perfect not only by virtue of the contract, which is the law as between the parties, but also by the laws of the country bearing upon this matter and the numerous precedents established in analogous cases.

If Fitzgerald or the Manoa had considered then that they had any right based upon article 11 of the contract, they should have had recourse to the tribunals of the Republic to enforce it, demanding the Government to prove in justice the cause upon which the declaration of nullity was based. Their failure to do so justifies the presumption that they recognized they had no recourse.

The said article 11 prevents them absolutely now from having recourse to this honorable Commission, since by it it was expressly agreed that whatever controversy might arise between the parties to the contract should be decided by the local tribunals.

The Fitzgerald concession having been annulled legally and legitimately, as has been shown, the Government granted it to another American citizen by the name of George Turnbull, who also neglected in the same manner to fulfill the agreement, and who for a period of many years hindered the development of those rich regions, occasioning to the country incalculable losses, which this latter has resigned itself to suffer until now, in order to avoid greater complications, and to which losses it appears that no importance is given in the mind of the claimants, who believe themselves to be the only ones injured.

Again, the Government found itself obliged, because of the laches (informalidad) of the new grantee, to reiterate the nullity of the last concession, exercising thereby a right which Turnbull did not deny either.

By a resolution adopted in the year 1896, the Manoa Company was again placed in the enjoyment of its original concession; but such act, as well as all the rights which are alleged to be derived therefrom (claim of the Orinoca Company, Limited), are null and lack juridic validity and legal efficacy, since the granting of the new concession ought to have been done with all the legal formalities which the constitution and the laws of the country prescribe, because it can not be admitted juridically that rights extinguished by the effect of a formal declaration of annulment could be reestablished without the necessary legal steps. Therefore the rights which not only the Manoa but also the Orinoca have enjoyed since the new and illegitimate concession are rights to which they were not entitled. Besides both companies are companies without cash capital and which have not been registered in Venezuela.

The claims of Mr. Turnbull are also from every point of view unjustified; in the first place, he did not fulfill the obligations which he contracted with the Government, and with reference to the Imataca mine the latter has made frequent and important concessions, such as the extension of rights, the ratification of titles at his solicitation, etc., and has done this at times when it could have declared the forfeiture of the mining concession, for want of its fulfillment and conformity with the articles of the reglamentary law of August, 1887.

Generally, all the difficulties which Turnbull has experienced in the enjoyment and exercise of his concessions in their greater part have been caused by the opposition, rivalries, and intrigues of those claiming the Manoa concession, and because he did not enforce his rights before the tribunals of the country, since when he has had recourse to them, full justice has been administered to him in various proceedings. The seizure of vessels or confiscation which is complained of in one part of his claim was consented to by him on account of his not having appealed from the judgment which ordered it, and which could very well be the result of error and not of bad faith, as he unreasonably supposes. It would be useless to enter here into a discussion of the justice of such judgment, since he neglected to take the proceedings which the laws authorize for an appeal from it. He himself acknowledges that the employee to whom he refers was reprovved by the Government and dismissed. Under such circumstances it is not possible to establish the responsibility of the latter for acts of unfaithful employees, whose conduct it has disapproved and punished.

In general terms, the agent of Venezuela denies the present claims as well as all the facts upon which they are alleged to be founded, because they are inexact; and since the record presented by the claimants and that which is extant in the official archives is very extensive and requires for its complete study a longer space of time than that which has been given to the narrator, he prays the tribunal to concede him a new extension with the object of amplifying the present answer and producing in copies duly certified the documents substantiating it.

Caracas, August 17, 1903.

F. ARROYO PAREJO.

[Translation.]

GEORGE TURNBULL, THE MANOA COMPANY, Limited, and The Orinoco Company, Limited, v. THE REPUBLIC OF VENEZUELA.	} Claims Nos. 45, 46, 47.
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SUPPLEMENT TO THE ANSWER.*Honorable Members of the Venezuelan-American Mixed Commission:*

As an addition to what has been set forth by the undersigned, in the answer to the above-enumerated claims, and with the object of proving—

(1) That the Manoa Company, Limited, did not comply with the stipulations of the contract made with C. C. Fitzgerald, of whom it is the successor;

(2) That likewise George Turnbull did not fulfill the contract made with the Nation;

(3) That the Venezuela Government has made to this latter concessions which would compensate the damages which he may have suffered, and

(4) That the declaration of the nullity of both concessions was well founded in law, the undersigned produces the following documents:

A record marked No. 1, which contains the contract made with Mr. C. C. Fitzgerald, the various petitions of extension asked by the Manoa Company, and a recital of the reasons upon which the declaration of nullity was based;

A record marked with the letter "A," containing a memorandum upon the Manoa affair;

A record marked No. 2, containing a contract made with George Turnbull, and the reasons which gave rise to its forfeiture;

A record marked No. 3, referring to the Pedernales mine;

A record marked with the letter "B," containing a memorandum concerning the Manoa matter, and the judgment rendered by the high federal court in favor of George Turnbull;

A record marked No. 7, in which there appear various concessions of public lands made in favor of George Turnbull;

A record marked No. 9, relative to the asphalt mine Pedernales;

A record marked No. 11, relative to the cession of public lands to the American citizen, George Turnbull;

A record marked No. 13, containing various representations of George Turnbull concerning the iron mine "Imataca," and the state of bankruptcy of the Manoa Company, Limited;

A record marked with the letter "C," containing the documentation forwarded by the jefe civil of the district Dalla Costa, State of Guiana, concerning the proceedings of the Orinoco Company, Limited;

A record marked with the letter "D," concerning the same matter.
Caracas, August 24, 1903.

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George Turnbull, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 45.
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THE UNITED STATES OF AMERICA ON BEHALF of The Manoa Company (Limited), claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 46.
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THE UNITED STATES OF AMERICA ON BEHALF of the Orinoco Company (Limited), claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 47.
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BAINBRIDGE, *Commissioner*:

On the 22d day of September, 1883, a contract was celebrated in the city of Caracas, Venezuela, in the words and figures following, to wit:

[Translation.]

The minister of fomento of the United States of Venezuela, duly authorized by the president of the Republic, of the one part, and Cyrenius C. Fitzgerald, resident of the Federal Territory Yuruary, of the other part, have concluded the following contract:

ARTICLE I.

The Government of the Republic concedes to Fitzgerald, his associates, assigns, and successors, for the term of ninety-nine years, reckoning from the date of this contract, the exclusive right to develop the resources of those territories, being national property, which are hereinafter described.

(1) The island of Pedernales, situated to the south of the Gulf of Paria, and formed by the gulf and the Pedernales and Cucuina streams.

(2) The territory from the mouth of the Araguao, the shore of the Atlantic Ocean, the waters above the Greater Araguao to where it is joined by the Araguaito stream; from this point following the Araguaito to the Orinoco, and thence the waters of the upper Orinoco surrounding the island of Tortola, which will form part of the territory conceded, to the junction of the Jose stream with the Piacoa; from this point following the waters of the Jose stream to its source; thence in a straight line to the summit of the Imataca range; from this summit following the sinuosities and more elevated summits of the ridge of Imataca to the limit of British Cuyana; from this limit, and along it toward the north to the shore of the Atlantic Ocean, to the mouth of the Araguao, including the island of this name, and the others intermediate or situated in the delta of the Orinoco, and in contiguity with the shore of the said ocean. Moreover and for an equal term, the exclusive right of establishing a colony for the purpose of developing the resources already known to exist, and those not yet developed of the same region, including asphalt and coal; for the purpose of establishing and cultivating on as high a scale as possible agriculture, breeding of cattle, and all other industries and manufactures which may be considered suitable, setting up for the purpose machinery for working the raw material, exploiting and developing to the utmost the resources of the colony.

ARTICLE II.

The Government of the Republic grant to the contractor, his associates, assigns and successors, for the term expressed in the preceding article, the right of introduction of houses of iron or wood, with all their accessories, and of tools and of other utensils, chemical ingredients and productions which the necessities of the colony may require; the use of machinery, the cultivation of industries, and the organiza-

tion and development of those undertakings which may be formed, either by individuals or by companies which are accessory to or depending directly on the contractor or colonization company; the exportation of all the products, natural and industrial, of the colony; free navigation, exempt from all national or local taxes, of rivers, streams, lakes, and lagoons comprised in the concession, or which are naturally connected with it; moreover the right of navigating the Orinoco, its tributaries and streams in sailing vessels or steamships for the transportation of seeds to the colony for the purpose of agriculture, and cattle and other animals for the purpose of food and of development of breeding, and, lastly, free traffic of the Orinoco, its streams and tributaries, for the vessels of the colony entering it and proceeding from abroad, and for those vessels which, either in ballast or laden, may cruise from one point of the colony to another.

ARTICLE III.

The Government of the Republic will establish two ports of entry at such points of the colony as may be judged suitable, in conformity with the treasury code.

The vessels which touch at these ports, carrying merchandise for importation, and which, according to this contract and the laws of the Republic, is exempt from duties, can convey such merchandise to those points of the colony to which it is destined and load and unload according to the formalities of the law.

ARTICLE IV.

A title in conformity with the law shall be granted to the contractor for every mine which may be discovered in the colony.

ARTICLE V.

Cyrenius C. Fitzgerald, his associates, assigns, or successors, are bound:

(1) To commence the works of colonization within six months, counting from the date when this contract is approved by the federal council in conformity with the law.

(2) To respect all private properties comprehended within the boundaries of the concession.

(3) To place no obstacle of any nature on the navigation of the rivers, streams, lakes, and lagoons, which shall be free to all.

(4) To pay 50,000 bolivars in coin for every 46,000 kilograms of sarrapia and cauche which may be gathered or exported from the colony.

(5) To establish a system of immigration which shall be increased in proportion to the growth of the industries.

(6) To promote the bringing within the law and civilization of the savage tribes which may wander within the territories conceded.

(7) To open out and establish such ways of communication as may be necessary.

(8) To arrange that the company of colonization shall formulate its statutes and establish its management in conformity with the law of Venezuela, and submit the same to the approbation of the Federal Executive, which shall promulgate them.

ARTICLE VI.

The other industrial on which the law may impose transit duties shall pay those in the form duly prescribed.

ARTICLE VII.

The natural and industrial productions of the colony, distinct from those expressed in article 5, and which are burdened at the present time with other contracts, shall pay those duties which the most favored of those contracts may state.

ARTICLE VIII.

The Government of the Republic will organize the political, administrative, and judicial system of the colony, also such armed body of police as the contractor or the company shall judge to be indispensable for the maintenance of the public order, the expense of the body of police to be borne by the contractor.

ARTICLE IX.

The Government of the Republic, for the term of twenty years, counting from the date of this contract, exempts the citizens of the colony from military service and from payment of imposts or taxes, local or national, on those industries which they may engage in.

ARTICLE X.

The Government of the Republic, if in its judgment it shall be necessary, shall grant to the contractor, his associates, assigns, or successors, a further extension of six months for commencing the works of colonization.

ARTICLE XI.

Any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic and by the competent tribunals of the Republic.

Executed in duplicate, of one tenor and to the same effect, in Caracas, 22d September, 1883.

Señor Heriberto Gordon signs this as attorney of Señor Cyrenius C. Fitzgerald, according to the power of attorney, a certified copy of which is annexed to this document.

[Seal of the
Ministry of Fomento.]

M. CARABAÑO,
Minister of Fomento.
HERIBERTO GORDON.

The foregoing contract was approved by the Congress on May 23, 1884, and a copy thereof, with the approbation, was published in the Official Gazette, No. 3257, on May 29, 1884, and it was afterwards published in and among the laws and decrees of Venezuela. (Recopilacion, Vol. XI, p. 98.)

On the 19th of February, 1884, an extension of six months was granted to Fitzgerald to commence the work of colonization, the extension to count from March 22 of that year. (Official Gazette No. 3182.)

On June 14, 1884, Cyronius C. Fitzgerald granted and assigned said contract concession to the Manoa Company, Limited, a corporation created, organized, and existing under and by virtue of the laws of the State of New York.

On August 24, 1884, one J. M. Laralde, Government secretary, in the absence of the citizen governor of the Territory Delta, certifies to the arrival at Pedernales on that date of the North American steamer *Wandell*, with Mr. Thomas A. Kelly, superintendent of the Manoa Company, Limited, C. E. Fitzgerald, engineer of the same company, and other employees thereof.

On September 21, 1884, Luis Charbone, national fiscal supervisor, temporarily in charge of the Government of the Federal Territory Delta, certified that the Manoa Company, Limited, had commenced the erection of a building, and to colonize at the mouth of the river Arature on the 10th of that month, "in conformity with what is established in the contract celebrated between the General Government and Mr. C. C. Fitzgerald on the date of the 22d of September, 1883."

On the 14th of November, 1884, the following certificate was given:

FEDERAL TERRITORY OF THE DELTA,
OFFICE OF THE GOVERNMENT OF THE TERRITORY.

I, Manuel M. Gallegos, governor of the federal Territory of the Delta, on petition of Mr. Thomas A. Kelly, resident administrator of the Manoa Company, Limited, domiciled in Brooklyn, Phoenix building, 16 Court street, United States of America, certify: That on the 24th of August of the present year arrived at this port on the steamer *Wandell* the above-mentioned Mr. Thomas A. Kelly, Mr. C. C. Fitzgerald, engineer of said company, and various employees of the same, so complying with

the stipulations of article 5 and of the prorogation authorized on the 19th of February of this year of the contract celebrated with the Federal Executive by Mr. C. C. Fitzgerald, of whom the above-mentioned Manoa Company is the successor.

Pedernales, 14th November, 1884, twenty-first of the law and twenty-sixth of the of the federation.

(Signed) MANUEL M. GALLEGOS.

On the 7th of October, 1884, the following resolution was issued from the ministry of fomento (Official Gazette No. 3345):

Resolved, That the cabinet, having considered the solicitude of Mr. Heriberto Gordon, attorney for the Manoa Company, Limited, in which he asks whether there is any contract, anterior or posterior, which impairs or limits the rights which the said company has acquired as successor to the contract celebrated with Mr. C. C. Fitzgerald on the 22d of September, 1883, the President of the Republic has seen fit to declare that the Manoa Company, Limited, has perfect right in accordance with the contract to exploit the products which are to be found within the limits of the lands comprised in this concession.

Communicate it and publish it.

For the National Executive:

(Signed) JACINTO LARA.

In May, 1885, the Manoa Company, Limited, shipped by the brig *Hope* a consignment of about 338,068 kilograms of asphalt mining and refining machinery, material for houses and wharves, and a steam launch for work on piers, etc. Under date of May 23, 1885, the minister of fomento addressed a note to the minister of hacienda asking for order of exemption of duties on shipment per brig *Hope* under the terms of the Fitzgerald contract.

On March 4, 1885, the Manoa Company, by C. C. Fitzgerald, its president, notified the Venezuelan Government that the agitation of the boundary dispute between Great Britain and Venezuela seriously interfered with the plans of the company in the development of the concession. Fitzgerald stated that he had been notified by the agents of the British Government that the latter would not permit the development of the resources of or the establishment of industries in such part of the concession as was claimed by it and would maintain a force for the purpose of hindering trespass thereon. In view of this Fitzgerald requested of the Venezuelan Government a clear statement of the guarantees to be expected in the future as to any interference with the company's rights because of such invasion, and that whatever the result of the negotiations between England and Venezuela, the time lost thereby by the company should not be counted against the company.

On the 1st day of January, 1886, Gen. Guzman Blanco, envoy extraordinary and minister plenipotentiary of the United States of Venezuela to various courts of Europe, on the one part, and of the other George Turnbull, American citizen, residing in New York, 115 Broadway, and then in London, entered into a contract at Nice ad referendum, of which articles 1 to 11 were identical with the articles of corresponding numbers in the Fitzgerald contract, with change of names of concessionaire. Article 12 of the Turnbull contract is as follows:

This contract shall enter into vigor in case of the becoming void through failure of compliance within the term fixed for this purpose of the contract celebrated with Mr. Cyronius C. Fitzgerald the 22d of September, 1883, for the exploitation of the same territory.

On the 9th of September, 1886, the following resolution issued from the ministry of fomento (Official Gazette No. 3852):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,
Caracas, September 9, 1886.

(Twenty-third year of the law and twenty-eighth of the federation.)

Resolved, That Señor Heriberto Gordon, with power from C. C. Fitzgerald, celebrated on the 22d of September, 1883, with the National Government, a contract for the exploitation of the riches existing in lands of national property in the Grand Delta, and the works ought to have been begun within six months from the aforesaid date. In spite of such time having elapsed without commencing the works, the Government granted him an extension of time for the purpose; and, inasmuch as said contractor has not fulfilled the obligations which he contracted, as stated in the report of the director of national riches, specifying in reference as to article 5 of the contract in question the councilor in charge of the Presidency of the Republic, having the affirmative vote of the federal council, declares the insubsistency or annulment of the aforesaid contract.

Let it be communicated and published.

By the National Executive:

(Signed) G. PAZ SANDOVAL.

On the 10th of September, 1886, the following resolution was issued from the ministry of fomento (Official Gazette No. 3852):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,
Caracas, September 10, 1886.

(Twenty-third year of the law and twenty-eighth of the federation.)

Resolved, That by disposition of the citizen federal councilor of the Republic, and with the affirmative vote of the federal council, is approved the contract celebrated by the illustrious American Gen. Guzman Blanco, envoy extraordinary and minister plenipotentiary of Venezuela to various courts of Europe, with Mr. George Turnbull, for the exploitation of the delta of the Orinoco, of the following tenor:

Gen. Guzman Blanco, envoy extraordinary and minister plenipotentiary of the United States of Venezuela to various courts of Europe, of the one part, and of the other George Turnbull, American citizen, residing in New York, 115 Broadway, and at present in London, have settled and arranged to celebrate the following contract ad referendum: (Here follow articles 1 to 11, inclusive, which are identical with the articles of corresponding numbers in the Fitzgerald concession, with change of names of concessionaire.)

ARTICLE 12. This contract shall go into effect in case of the becoming void through failure of compliance within the term fixed for this purpose of the contract celebrated with Mr. Cyrus C. Fitzgerald the 22d of September, 1883, for the exploitation of the same territory.

Done three of one tenor to a single effect in Nice, the 1st of January, 1896.

GUZMAN BLANCO.
GEO. TURNBULL.

[L. s.]

Let it be communicated and published.

For the Federal Executive:

G. PAZ SANDOVAL.

The Guzman Blanco-Turnbull contract was approved by act of Congress on the 28th of April, 1887. (Official Gazette No. 4048.)

On the 13th of March, 1888, the following resolution was issued from the ministry of fomento (Official Gazette No. 4290):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,
Caracas, 13th of March, 1888. (24th and 30th.)

Resolved, That Señor George Turnbull having purchased 500 hectares of waste lands, situated on both banks of the Cano Corosimo, Manoa district of the Federal Territory Delta, and acquired the ownership, in conformity with the law, of the mine of iron denominatd Imataca, situated in the said lands. The President of the Republic, with the vote of the Federal council, declares, on the petition of the interested party,

that the said mine and lands constitute a property apart from the concession made to said Turnbull according to the contract celebrated on the 1st of January, 1886, and consequently is not submitted to the conditions and obligations of the said contract, but is governed by the decree regulating the law of mines in force.

Let it be communicated and published.

For the Federal Executive:

MANUEL POMBONA PALACIO.

On the 14th of March, 1888, the ministry of fomento issued the following document (Official Gazette No. 4292):

The President of the Republic, with the vote of the Federal council: Whereas, it appears that Señor George Turnbull has applied to the Government to grant definite title of ownership of a mine of iron which, by virtue of the right secured to him by article 23 of the decree regulating the law of the matter, he has accused before the governor of the Federal Territory Delta, which mine is found situated in the Manoa district of the same territory, 1,000 meters from the left margin of the Cano Corosimo, starting from a point distant 2,500 meters from its debouchment in the Orinoco, upon a hill called Lome del Monte, which runs east and west, and whose geographical position is latitude 8° 29' N., longitude 61° 18' W., Greenwich, accusation which has been confirmed by the presentation of the provisional title of said mine issued with date of the 20th of October of the year last past by the governor of the territory, and the requisites provided by the decree regulating the law of mines, dictated the 3d of August, 1897, having been fulfilled, has ordered to concede to Señor Turnbull the ownership of the said mine in all the extension which belongs to it and in respect to all the deposits of iron comprised in the same, in conformity to the denunciation of law made before the said governor. The present title shall be recorded in the respective office of registry and give right to the concessionaire and his successors for the term of ninety-nine years to the exploitation and possession of the said mine, with the restrictions of law, and without burden imposed on its mineral products which are found in the case determined article 40 of the regulating decree already mentioned.

Given, signed, sealed, and countersigned in the Federal palace at Caracas, March 14, 1888, twenty-fourth year of the law and thirtieth of the federation.

HERMOGENES LOPEZ.

Countersigned, the minister of fomento:

MANUEL TOMBONA PALACIO.

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,
Caracas, 13th of March, 1888. (24th and 30th.)

The law of public lands and the decree regulating the law of mines, in force, having been complied with in the accusation made by Mr. George Turnbull of 500 hectares of public lands for use in the exploitation of the mine of iron which he possesses, denominated Imataca, situated on both margins of the Caño Corosimo, in the District Manoa of the Federal Territory Delta, the President of the Republic, with the affirmative vote of the federal council, has disposed that the corresponding title of adjudication shall be issued.

Let it be communicated and published.

For the Federal Executive.

MANUEL FOMBONA PALACIO.

On the 14th of March, 1888, the ministry of fomento issued the following document:

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES.

Having observed the formalities prescribed in the law of June, 1882, and in the decree regulating the law of mines, in force, the National Executive, with the affirmative vote of the federal council, has declared the adjudication, with date of the 3d instant, in favor of the citizen George Turnbull, of 500 hectares of waste lands which form the superficies of the mine of iron which said Señor George Turnbull possesses, denominated Imataca; which lands he acquires for uses of the exploitation of said mine, and are situated in the jurisdiction of the Manoa District of the Federal Territory Delta. The land surveyed is bounded on its four sides by lands of

national property, conceded by contract to Señor George Turnbull. The 500 hectares surveyed are divided in two sections—100 hectares to the north of the stream Corosimo, which commences near the village of Manoa and which comprise part of a hill which runs east and west, and 400 hectares to the south of said stream, including part of the Imataca range, denominated "Loma del Yonte," where is situated the mine of iron owned by Señor Turnbull. The adjudication has been made for the price of 7,100 bolívars in coin, equivalent to 20,000 bolívars of the 5 per cent national consolidated debt, which the purchaser has made over to the office of the board of public credit; and the Government having disposed that the title of ownership of said lands be issued the subscriber, the minister of fomento declares in the name of the United States of Venezuela that by virtue of the completed sale the dominion and ownership of said lands is from now transferred in favor of the purchaser, Señor George Turnbull, with the respective declarations expressed in articles 6, 7, and 8 of the law cited, which in their letter and contents authorize the present adjudication, and whose terms must be considered as clauses decisive on el particular.

Caracas, 14th of March, 1888, twenty-fourth year of the law and thirtieth of the Federation.

MANUEL FOMBONA FALACIOS.

On the 28th of June, 1888, the following resolution was issued from the ministry of fomento (Official Gazette No. 4882):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,
Caracas, 28th of June, 1888. (25th and 30th.)

Resolved, The requirements of the decree regulating the law of mines in force having been complied with by Señor George Turnbull in the accusation of the mine of asphalt which he has discovered in the District Cuzman Blanco of the Federal Territory Delta, on the borders of the Pedernales Channel, on the island of the same name; and having been presented the provisional title of ownership of the mine issued by the governor of aforesaid Federal Territory Delta, in conformity with article 9 of the aforesaid decree, the President of the Republic, with the vote of the federal council, resolves: That the definitive title of ownership to the above-cited mine of asphalt, for ninety-nine years, shall be issued in favor of Mr. George Turnbull.

Let it be communicated and published.

For the Federal Executive.

CORONADO.

On the 30th day of June, 1888, the following document was issued by the ministry of fomento:

The President of the Republic, with the vote of the federal council: Whereas it appears that Señor George Turnbull has petitioned the Government to issue definite title of ownership of a mine of asphalt which, by virtue of the right conceded by article 23 of the decree regulating the law of the matter, he has accused before the governor of the Federal Territory Delta, which mine is situated in the District Gorman Blanco of the Territory mentioned, on the shores of the stream of Pedernales, on the island of the same name, upon a visible extension of 1,300 meters in length by 500 in width, which runs northeast to southwest, and whose geographical position is as follows: Latitude 10° 11' 7" N., longitude 62° 12' 24" W. of the meridian of Greenwich; which accusation he has proved by the presentation of the provisional title to said mine, issued under date of the 9th of January of the current year by the governor of the Territory; and the requisites provided by the decree regulating the law of mines of August 3, 1887, having been fulfilled, has disposed to concede to Señor George Turnbull the ownership of the said mine in all the extensions which belong to it and in respect of all the deposits comprised in the same, in conformity with the denunciation of law made before the said governor.

The present title shall be registered in the respective office of registry, and give right to the concessionaire and to his successors, for the term of ninety-nine years, to the exploitation and profit of the said mine, and without that burden on its products imposed on any mine by reason of being in the case determined by article 40 of the regulating decree already mentioned.

Given, signed, sealed, and countersigned in the Federal Palace in Caracas, the 30th of June, 1888, twenty-fifth year of the law and thirtieth of the Federation.

HERMOGENES LOPEZ.

Countersigned, the Minister of Fomento:

VICENTE CORONADO.

On the 3d day of October, 1888, the ministry of fomento issued the following document:

THE UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES.

The formalities prescribed in the law of June 2, 1882, concerning the matter having been observed, the National Executive, with the affirmative vote of the federal council, has declared the adjudication on this date in favor of Señor George Turnbull of 200 hectares of public lands destined for the uses of the exploitation of a mine of asphalt which the purchaser possesses, situated in the District Guzman Blanco of the Federal Territory Delta, in the island of Pedernales, and whose boundaries are: Upon the north, groves of mangrove trees and the mine of asphalt which Señor Turnbull actually exploits; upon the south, uncultivated waste lands and the lake denominated Angosturita; upon the east, plains and groves of mangroves; upon the west, agricultural plantations pertaining to various residents of Pedernales, and also some groves of mangroves. The adjudication has been made for the price of 2,970 bolivars in coin, equivalent to 8,000 bolivars of the 5 per cent national consolidated debt, which the purchaser has made over in the office of public credit; and the Government having disposed that the title of ownership of said lands shall be issued, the undersigned, the minister of fomento, declares in the name of the United States of Venezuela that by virtue of the completed sale the dominion and ownership of said lands is henceforth transferred in favor of the purchaser, Señor George Turnbull, with the respective declarations expressed in articles 6, 7, and 8 of the law cited, which in their letter and contents authorized the present adjudication, and whose terms must be considered as clauses decisive in the matter.

Caracas, October 3, 1888, twenty-fifth year of the law, and thirtieth of the Federation.

VICINTE CORONADO.

On the 18th of June, 1895, the following resolution was issued by the ministry of fomento (Official Gazette, No. 6433):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,
Caracas, June 18, 1895. (64th and 37th.)

Resolved, On April 28, 1887, the National Congress approved the contract ad referendum which was made in Nice the 1st day of January, 1886, by Gen. Guzman Blanco, envoy extraordinary and plenipotentiary minister to several courts of Europe, and the North American citizen, George Turnbull. The Government had undertaken in that contract to grant for a term of ninety-nine years to the aforesaid George Turnbull the right to exploit the riches found in a large portion of the Grand Delta of the Orinoco and an exterior portion of territory in Guyana, lower Orinoco, including the islands of Tortola and Aragua, together with all the franchises in connection with the colonization, exploitation, and development of the aforesaid territories. The National Executive on its part has complied with all the obligations incurred upon as per the contract, and it being evident that the cessionary citizen, George Turnbull, during the eight years elapsed since the celebration of the said contract, excepting some steps taken for the exclusive benefit of his own convenience, has not complied with any of the obligations stipulated, neither has he exercised any act in favor of the interests of the nation, nor by any means profitable to the development of the natural riches of the regions that were the object of the concession; the President of the Republic considering as injurious and fruitless to the nation the concession granted to the citizen, George Turnbull, has decided to declare the annulment of the contract ad referendum signed at Nice the 1st day of January, 1886, which was approved by the Executive of the Republic on September 10 of the same year, comprising in the same case of nullity and insubsistency of the aforesaid contract the concession of the "Imataca" iron mine, definitive title to which was issued March 13, 1888, and the concession of the asphalt mine situated in the island of Pedernales, the definitive title of which was issued June 28 of the same year, as well as any other rights, titles, or concessions deriving from the said contract.

Let this be communicated and published.

By the National Executive.

(Signed) JACINTO LARA.

On the same day, to wit, the 18th day of June, 1895, the ministry of fomento issued the following resolution (Official Gazette, No. 6433):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,
Caracas, June 18, 1895. (84th and 37th.)

Resolved, After having considered in the cabinet the petition addressed to this ministry by the Manoa Company (Limited), which among other things, solicits the ratification, confirmation, and execution in its favor of all the rights and privileges conceded to Cyrenius C. Fitzgerald on the 22d day of September, 1883, by the contract declared insubstantial on the 9th day of September, 1886; the President of the Republic after examination of the same has declared the caducity, for reason of want of faithful compliance with its obligations and stipulations of the concession of George Turnbull, and has substituted therefor in the same rights and privileges the aforesaid contract, and has seen fit to dispose and authorize the said Manoa Company (Limited), within six months, reckoning from the date of this resolution, to renew its works of exploitation, in order to the greater development of the natural riches of the territories embraced in said concession; hereby confirming it in all the rights stipulated and granted to said Fitzgerald by the said contract of September 22, 1883. And the said Manoa Company (Limited), shall report to the National Executive from time to time through the organ of this ministry all of the works carried on by it in execution of said contract, in order that the Government may be enabled to judge of its compliance with the obligations of said contract in conformity with the spirit and the magnitude of its stipulations.

Communicate and publish.

By the National Executive.

(Signed) JACINTO LARA.

On the 10th of July, 1895, a resolution was issued by the ministry of fomento as follows (Official Gazette, No. 6451):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,
Caracas, July 10, 1895. (85th and 37th.)

Resolved, After having considered in the council of ministers the petition addressed to this office by the citizen George Stelling, vice-president of the board of directors of the National Anonimous Company, called "Mines of Pedernales," requesting the modification of the resolution issued on June 19 last, by which the general concession granted to the citizen George Turnbull was declared null, in order to except from the said annulment the mine of Pedernales and the 200 hectares of public lands belonging to the aforesaid company, the President of the Republic, after studying the documents filed by the the petitioner and taking into consideration:

First. That in accordance with article 28 of the mining law under which the definitive title to the asphalt mine of the Pedernales Island was granted, said title "can be transferred to any person able to contract."

Second. That as per article 50 of the same laws and the documents filed by the petitioner, on November 19, 1890, date on which citizen George Turnbull transferred to the National Company "Mines of Pedernales" the above referred mining concession and the 200 hectares of public lands needed for its exploitation, the definitive title issued had not been voided or annulled inasmuch as the cessionary had been exploiting the mine therein mentioned; and finally, that the National Company "Mines of Pedernales" obtained the property through a good title, has been possessing in good faith and has been and is now exploiting the said asphalt mine, as per evidence shown in the documents which were filed, so that respecting the said mine the failure of fulfillment on the part of the concessionary—upon which the said resolution of June 10 of the present year is based—is not applicable; does hereby resolve in equity and justice that the said resolution of June 19 last, in which the contract celebrated with the citizen George Turnbull was declared null, does not in any way affect the rights, legitimately acquired of the asphalt mine of the Pedernales Island, nor the 200 hectares of land destined to its exploitation by the National Anonimous Company, called "Mines of Pedernales," which company shall, consequently, be at liberty to go on with the works of the aforesaid mine and the 200 hectares of public land referred to.

(Signed) JACINTO LARA.

On November 20, 1896, the following resolution was issued from the ministry of fomento (Official Gazette, No. 6877):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,
Caracas, November 20, 1896. (86th and 38th.)

Resolved, Having considered at the council of ministers the petition addressed to this department by citizen George Turnbull, therein proving—as per the documents attached thereto—that the said George Turnbull lawfully obtained the definitive title to the iron mine called “Imataca” situate on both banks of the Caño Corosimo of the Manoa district of the Federal Territory Delta; that he complied with the requirements of the land laws and paid for the price of the adjudgment of 500 hectares of land which comprise the superficial area of said mine; that by virtue of George Turnbull having acquired the aforesaid mine and lands, the National Executive by resolution of March 13, 1886, declared that said mine and lands constitute a separate property from the Manoa concession granted to the above-mentioned Turnbull as per contract made January 1, 1886, not being subject therefor to the obligations of the aforesaid contract, but which will be ruled by the decrees regulating the mining laws; that it is also proved that the above-mentioned Turnbull has maintained the aforesaid mine in exploitation, according to the legal regulation, and finally, that at the Ciudad Bolívar custom-house the mining taxes were paid, corresponding to the 500 hectares which formed said mining concession; the citizen President of the Republic has thought fit to decide that the resolution of this department of June 18, 1895, published in the Official Gazette of June 19 of the same year, marked No. 6433, declaring the annulment of the contract made January 1, 1886, with the above-mentioned Turnbull for the exploitation of a portion of the Delta of the Orinoco, does in no way affect the rights legitimately acquired by him to the “Imataca” iron mine, which is hereby excluded from the aforesaid resolution, together with the 500 hectares of land forming its superficial area, and, consequently, the citizen George Turnbull remains authorized to continue the exploiting of the mine and public lands referred to.

Let it be notified and published.

(Signed)

THE NATIONAL EXECUTIVE.
By MANUEL A. DIAZ.

On the same day the following resolution was issued by the minister of fomento (Official Gazette, No. 6877):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,
Caracas, November 20, 1896. (86th and 38th.)

Resolved, Having considered at the council of ministers the petitions addressed to this department by the citizens J. A. Radcliffe, J. A. Bowman, James P. Elmer, Francisco de P. Suarez, Luis Aristigueta Orillet, George N. Baxter, and Ellis Grell, in behalf and by authority of the companies called “Manoa Company, Limited,” “Orinoco Mining Company,” and “Orinoco Company, Limited,” as well as to reports and other documents filed; the citizen president of the Republic, wishing to put an end to the difficulties which have presented themselves preventing the exploitation of the Delta of “The Orinoco Concession,” otherwise known as “The Manoa,” referred to in the resolutions of June 18, 1895, has thought fit to recognize as valid the transfer made by the Manoa Company, Limited, to the Orinoco Company, Limited, of all its rights and title to and in the aforesaid concessions with the exception of the Imataca iron mine, situate on both banks of the Caño Corosimo, in the Manoa district of the old Federal Territory Delta and the 500 hectares of public lands which comprises its superficial area, as well as the asphalt mine called “Minas de Pedernales,” situate in the island of the same name, together with the 200 hectares destined for its exploitation. He acknowledges, likewise, as valid the work and all acts of the Orinoco Company, Limited (successor to the Manoa Company, Limited), done and performed by them in fulfillment of the terms of the resolution of June 18, 1895; and the President of the Republic disposes that the said company be granted the exemption from payment of custom-house duties on machinery and other effects imported through the Ciudad Bolívar custom-house destined to the works of said concession; and, finally, that all the facilities be granted to the interested parties for the aforesaid exploitation, providing such facilities be not in opposition to the laws and resolutions of the Republic in force.

Let it be notified and published.

THE NATIONAL EXECUTIVE,
By MANUEL A. DIAZ.

On the 10th of October, 1900, the following resolution was issued by the ministry of fomento (Official Gazette, No. 8053):

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,
Caracas, October 10, 1900. (90th and 42d.)

Resolved, Considering that the contract celebrated September 22, 1883, with Cyrenius O. Fitzgerald, and on which the Orinoco Company, Limited, now bases its rights for the exploitation of the natural riches in the Delta of the Orinoco and colonization of the land conceded has now no legal existence, for that it was declared void for failure of performance of what was in it stipulated; that in April, 1887, the National Congress approved a contract celebrated with the North American citizen, George Turnbull, in the same regions and with the same clauses and in all equal with that of the Manoa Company, Limited (cessionaire of Fitzgerald), declared void, which was also for the same clauses declared in caducity on the 18th of June, 1895; and that on the same day of the said month and year this office issued an Executive resolution restoring to the Maona Company, Limited, the rights and privileges conceded by the original contract with Fitzgerald in 1883; and

Considering (first) the contract celebrated with C. O. Fitzgerald having been declared void for failure of compliance with article 5, this can not be considered in vigor without the intervention of a new contract approved by the National Congress; second, that the legislature of the State of Bolivar, in its ordinary session of 1899, adopted a joint memorial to the National Congress, declaring that the company cessionaire of the contract celebrated with Fitzgerald had not complied in its fourteen years of existence with any of the clauses established in article 5 of the said contract, and that this interferes with the interests of the Venezuelans for exploiting the natural products of that region of the Republic; and, third, that according to the notes and reports forwarded to this office by the authorities of the different places of the region to which refers the concessions already mentioned, all concur in the failure of performance of the same and of the palpable evils which it occasions, as well to the national treasury as to the individual industries:

The supreme chief of the Republic has seen fit to dispose that the mentioned contracts are declared insubsistent.

Let it be communicated and published.

For the National Executive.

REMON AYALA.

The following provisions of the constitution of Venezuela, adopted in 1881, and in force on September 22, 1883, are pertinent to the consideration of these claims. Similar provisions are found in the later constitutions of the Republic.

By paragraph 15, article 13, of this constitution, the States of the Federation agree to cede to the Government of the Federation the administrations of the mines, public lands, and salt deposits, to the end that the former shall be governed by a system of uniform exploitation, and the latter for the benefit of the people.

Title 5, section 1, article 66, provides in relation to the powers of the Executive:

Besides the foregoing powers of the President of the United States of Venezuela he, with the deliberative vote of the federal council, shall exercise (inter alia) the following:

Par. 2a. Administer the public lands, the mines, and the salt deposits of the States by delegation of an authority from the latter.

Par. 6a. Celebrate contracts of national interest in accordance with the laws, and submit the same to the legislature for its approval.

Title 5, section 2, article 69, provides in relation to the ministers as follows:

The ministers are the natural and public organs of the President of the United States of Venezuela. All his acts shall be subscribed by them, without which requisite they shall not be complied with nor executed by the authorities, by employees, or by private individuals.

Among the powers of the Congress enumerated in title 4, section 5, article 43, is the following (par. 17):

To approve or reject the contracts concerning national works which the President with the approval of the federal council shall make, without which requisite they shall not become effective.

Of the high federal court the constitution in title 6, section 2, of article 80, provides (par. 9a) that it shall—

Take jurisdiction of the controversies which result from the contracts or negotiations which the President of the Federation may celebrate.

The act of Congress of May 7, 1881, providing for the organization of the high federal court, prescribes in regard to the said court that it shall have the power (*inter alia*):

To take jurisdiction in the first and sole (*unica*) instance:

First of the judicial matters comprised in the attributions 1, 2, 3, 4, and 9 of article 80 of the constitution and in No. 30 of article 13.

These three claims are so intimately related in respect of the facts and circumstances out of which they arise that they are herein considered together.

The Fitzgerald contract of September 22, 1883, was executed in strict conformity with constitutional requirements. It was signed on behalf of the Government by the minister of fomento "duly authorized by the President of the Republic." It was approved by the federal council. It was submitted for approval to the National Legislature, and was by it approved on the 23d day of May, 1884, and it received the formal sanction and signature of the President on May 27, 1884. It was published in the Official Gazette, No. 3257, on May 29, 1884.

The instrument thus solemnly executed constituted a bilateral contract, giving rise, as between the parties thereto, to certain mutual rights and obligations. The Government of Venezuela granted to Fitzgerald, his associates, assigns and successors, for the term of ninety-nine years reckoning from the date of the contract, the exclusive right to develop the resources of the territories designated; and, for an equal term of years, the exclusive right of establishing a colony for the purpose of developing the resources already known to exist, and those not yet developed of the same region, including asphalt and coal. The Government agreed that a title in conformity with the law should be granted to the contractor (Fitzgerald) for every mine which might be discovered in the colony. Fitzgerald agreed to perform the stipulations of Article V in respect to exploitation and colonization therein set forth. The parties mutually agreed that any questions or controversies which might arise out of the contract should be decided in conformity with the laws of the Republic and by its competent tribunals. The constitution of the Republic provided that the high federal court had jurisdiction of the controversies which might result from the contracts celebrated by the President.

Fitzgerald assigned the contract-concession to the Manoa Company, Limited, on June 14, 1884. The evidence shows that the company, within the time stipulated in the contract and its prorogation of February 19, 1884, commenced the work of exploitation and colonization. It proceeded with the work until, in the spring of 1885, it encountered serious difficulties resulting from a domestic revolution headed by General Bulgar, and from the aggression of the British Government

upon the territories included within the concession. The company duly notified the Venezuelan Government of these difficulties.

In December, 1885, one George Turnbull, a citizen of the United States, entered into negotiations with Gen. Guzman Blanco, ex-President of Venezuela, and at that time occupying the position of envoy extraordinary and minister plenipotentiary of Venezuela to various courts of Europe; and those negotiations resulted in the signing at Nice, on January 1, 1886, of an ad referendum contract substantially of the same purport and tenor as the Fitzgerald contract; granting to Turnbull the same rights and privileges in the territories designated as had previously been conceded to Fitzgerald and his assigns; and containing the provision that it should become effective in case of the becoming void through failure of compliance within the term fixed for this purpose of the Fitzgerald contract for the exploitation of the same territory.

The time fixed for beginning the work of colonization in the Fitzgerald contract expired on September 22, 1884, prior to the Guzman Blanco-Turnbull agreement, and no evidence is presented here of any complaint by the Government of Venezuela of nonfulfillment with its terms on the part of the concessionaires prior to that date. Nor is any evidence presented of authority on the part of Guzman Blanco in his capacity as envoy extraordinary and minister plenipotentiary to various courts of Europe to enter into the contract with Turnbull for a concession for the public lands and mines—that power being by the constitutional provisions above quoted vested in the President of the Republic. The article recognizes the then existence and validity of the Fitzgerald concession. But in view of the well-known dominant influence of Guzman Blanco in Venezuelan affairs at the time, and the practical certainty of its ratification, the obvious effect of the Turnbull agreement was to work grave injury to the interests and credit of the Manoa Company, Limited.

On the 9th of September, 1886, by Executive resolution issued through the ministry of fomento, “the councillor in charge of the presidency, having the affirmative vote of the federal council,” declared the insubsistency or annulment of the Fitzgerald concession upon the ground that the contractor had not fulfilled the obligations of the contract, as stated in the report of the Director of the National Riches, specifically referring to the provisions of Article V thereof. One day later an Executive resolution declared the approval of the Guzman Blanco-Turnbull contract of January 1, 1886; and said contract was approved by Congress on April 28, 1887.

It is perfectly evident that the question whether or not the Manoa Company, Limited, had fulfilled the obligations of the contract, or any controversy as to that fact, was a question or controversy arising out of the contract, determinable, according to law and the agreement of the parties, only by the competent tribunals of the Republic. The Government of Venezuela, being a party to the contract, was not competent to decide such a controversy. The jurisprudence of civilized states and the principles of natural justice do not allow one party to a contract to pass judgment upon the other. If the Government had any reason to believe that the grantees of the concession “had, by misuser or nonuser thereof, forfeited their rights, then it should have itself appealed to the proper tribunals against the said grantees, and

there, by due process of judicial proceedings, involving notice, full opportunity to be heard, consideration and solemn judgment, have invoked and secured the remedy sought." *Nemo debet esse iudex in propria sua causa.*

Moreover, the Executive resolution of September 9, 1886, annulling the Fitzgerald contract, was an illegal assumption of power. Under the constitution of Venezuela the Executive was clothed with no such prerogative. Jurisdiction of controversies arising out of contracts celebrated by the President was vested solely in the high federal court. (Par. 9, art. 80 Const. and Law of May 7, 1881.)

The decree, in the absence of legal authority in the Executive to issue it, was an absolute nullity.

The decision of the high federal court under identical constitutional provisions rendered August 23, 1898, in the case of the New York and Bermudez Company would seem to be conclusive upon the point. That company claimed under a contract similar to that under consideration here. On January 4, 1898, the contract of the New York and Bermudez Company, for alleged failure of performance by the concessionaire, was declared null by Executive resolution. The matter was brought by petition of the company before the high federal court, which by its judgment of August 23, 1898, declared that "the Executive resolution passed by the National Government dated the 4th of January of the present year, declaring broken and determined the contract of which the New York and Bermudez Company is concessionaire is null and void."

The court says in its opinion:

The only point for our investigation is whether or not the Executive resolution which has given rise to the petition of the representative of the New York and Bermudez Company constitutes an act of usurped authority.

Notwithstanding the Executive resolution of September 9, 1886, the Fitzgerald contract remained subsistent and effective to vest in the grantees all the rights and privileges therein designated. And it follows that the subsequent approval of the Guzman-Blanco-Turnbull contract could not operate to invest Turnbull with the same rights and privileges, inasmuch as the Government could not grant to Turnbull the rights which it had previously granted to and which were legally existing in the grantees of the Fitzgerald contract.

It appears from the evidence that on March 14, 1888, the President of the Republic, with the affirmative vote of the federal council, declared the adjudication in favor of George Turnbull of 500 hectares of land which forms the superficies of the "Imataca" iron mine, under the formalities of the law relating to waste lands of June 2, 1882. The adjudication was made for the price of 7,100 bolivars in coin, equivalent to 20,000 bolivars of the 5 per cent national consolidated debt; which it is alleged Turnbull made over to the office of the board of public credit; and the Government having disposed that the title of ownership of said lands be issued, the minister of fomento declared in the name of the United States of Venezuela that by virtue of the completed sale the dominion and ownership of said lands was transferred in favor of the purchaser, George Turnbull.

On the same day, the President of the Republic, with the vote of the federal council, pursuant to the provisional title to the "Imataca" mine, issued by the governor of the Federal Territory Delta, on

October 30, 1887, to George Turnbull, and in accordance with the provisions of the decree regulating the law of mines, dictated August 3, 1887, conceded to George Turnbull the ownership of said mine in all the extension which belongs to it, and in respect of all the deposits of iron comprised in the same; giving to the said Turnbull as concessionaire, and his successors, for the term of ninety-nine years, the right to the exploitation and possession of said mine.

On the 30th of June, 1888, the President of the Republic, with the vote of the federal council, conceded to George Turnbull a definitive title to the mine of asphalt situated in the District of Guzman Blanco in the Federal Territory Delta on the island of Pedernales, "the requisites provided by the decree regulating the law of mines of August 3, 1887, having been fulfilled."

On October 3, 1888, the National Executive, with the affirmative vote of the federal council, declared the adjudication in favor of George Turnbull of 200 hectares of public lands, "destined for the exploitation of a mine of asphalt which the purchaser possesses," situated in the district of Guzman Blanco of the Federal Territory Delta, in the island of Pedernales. The adjudication was made for the price of 2,970 bolivars in coin, equivalent to 8,000 bolivars of the 5 per cent national consolidated debt, which Turnbull is alleged to have made over to the office of public credit; and the Government having disposed that the title of ownership of said lands shall be issued, the minister of fomento declared, in the name of the United States of Venezuela, that by virtue of the completed sale the dominion and ownership of said lands was henceforth transferred in favor of the purchaser, George Turnbull.

It is difficult to perceive in what manner these grants to George Turnbull can be sustained, in view of the fact that at the time they were made the Fitzgerald contract had not been judicially declared forfeited, and was in full force and effect. The lands and mines described in the Turnbull titles are within the territory designated in the Fitzgerald concession. The Government of Venezuela, by the latter instrument, conceded to Cyrenius C. Fitzgerald, his associates, assigns and successors, for the term of ninety-nine years, the *exclusive* right to develop the resources of "the Island of Pedernales" and "the territory from the mouth of the Aragua, the shore of the Atlantic Ocean, the waters above the Greater Aragua to where it is joined by the Aragua stream; from this point following the Aragua to the Orinoco, and thence the waters of the upper Orinoco, surrounding the island of Tortola, which will form part of the territory conceded, to the junction of the Jose stream with the Fiacoa; from this point following the waters of the Jose stream to its source; thence in a straight line to the summit of the Imataca Range; and from this point, following the sinuosities and more elevated summits of the ridge of Imataca, to the limit of British Guiana; from this limit and along it toward the north shore of the Atlantic Ocean; and, lastly, from the point indicated, the shore of the Atlantic Ocean, to the mouth of the Aragua, including the island of this name and the others intermediate or situated in the delta of the Orinoco, and in contiguity with the shore of the said ocean."

Moreover, and for an equal term of years, the Government of Venezuela conceded to the grantees of the Fitzgerald contract "the *exclusive*

right of establishing a colony for the purpose of developing the resources already known to exist, and those not yet developed, of the same region, including asphalt and coal, etc.”

And, furthermore, the Government of Venezuela agreed with Fitzgerald, his associates, assigns, and successors, that “a title in conformity with the law shall be granted to the contractor for every mine which may be discovered in the colony.”

If the grants to Turnbull are valid, then the language of the Fitzgerald franchise is meaningless; for, on any such theory, the Government of Venezuela could by piecemeal take away from the grantees of the Fitzgerald concession and give to others every right or privilege therein conferred. It is perfectly clear that the Government, having in 1883 transferred the *exclusive* right of developing and exploiting the resources of the territory in question to Fitzgerald and his assigns, could not in 1888 transfer to Turnbull the right to any part of the resources of that same territory, for the plain and simple reason that the Government could not transfer what it did not possess. That he who is prior in time is stronger in right, is a maxim of both the civil and the common law. The Fitzgerald concession of September 22, 1883, not having been declared forfeited by any competent judicial authority, after notice, hearing, and judgment, was in 1888 a legally subsisting and valid agreement, binding upon both the parties to it, vesting in the grantees the *exclusive* right of exploitation of the delta territory and the island of Pedernales, and imposing upon the Government of Venezuela the obligation to grant a title, in conformity with the law, to Fitzgerald or his assigns for every mine discovered in the colony. The Turnbull titles of 1888 were in derogation of these prior rights and obligations, and vested in the grantee no rights whatever. They were altogether null and void.

The hostile and arbitrary acts of the Government, which the Manoa Company, Limited, assignee of the Fitzgerald contract, was wholly powerless to prevent, were calculated to, and it is alleged did, paralyze the operations of the company, impaired its credit, and prevented the further prosecution of its work of exploitation. So matters stood until, on the 18th of June, 1896, the Government declared the annulment of the Turnbull contract of January 1, 1886, and the definitive titles to the Imataca iron mine and the Pedernales asphalt mine, which had been issued to Turnbull in 1888, and on the same date the Government reaffirmed the Fitzgerald contract of September 22, 1883, and authorized the Manoa Company, Limited, within six months from that date to renew its works of exploitation in order to the greater development of the natural riches of the territory embraced in said concession, requiring the company to report to the national Executive from time to time, through the ministry of fomento, all of the works carried on by it in execution of the contract.

These resolutions of June 18, 1895, in no wise changed the legal status of the various interested parties. The Fitzgerald contract had never been legally annulled. The Guzman-Blanco-Turnbull contract of January 1, 1886, and the Turnbull titles of 1888 had never been legally effective, but were invalid ab initio. The resolution in favor of the Manoa Company, however, amounted to an authorization by the Venezuelan Government to the renewal of the work of exploitation and colonization—a permission of which the company promptly availed itself, as its reports presented in evidence here clearly show.

On the 10th of July, 1895, the Government, at the instance of the National Anonimous Company "Mines of Pedernales," resolved that "the resolution of June 19 (18) last, in which the contract celebrated with the citizen George Turnbull was declared null," did not in any way affect the rights, legitimately acquired, of the asphalt mine of the Pedernales Island, nor the 200 hectares of land destined to its exploitation by the National Anonimous Company, called "Mines of Pedernales," which company was consequently at liberty to go on with the works of the aforesaid mine and the 200 hectares of public land referred to.

On the 20th of November, 1896, upon the petition of George Turnbull, the President of the Republic thought fit to decide that the resolution of June 18, 1895, declaring the annulment of the contract made January 1, 1886, with the above-mentioned Turnbull for the exploitation of a portion of the delta of the Orinoco, did in no way affect the rights legitimately acquired by him to the "Imataca" iron mine, which was thereby excluded from the aforesaid resolution, together with the 500 hectares of land forming its superficial area, and consequently the citizen George Turnbull remained authorized to continue the exploitation of the mine and public lands referred to.

These resolutions are merely reassertions of the original Turnbull titles of 1888, and, like their originals, are in plain derogation of the prior and subsisting rights of the grantees of the Fitzgerald concession, and altogether null and void. The National Anonimous Company "Mines of Pedernales" could not have occupied the position of innocent purchaser, inasmuch as the Fitzgerald contract had been for many years a matter of public record.

On the 16th of October, 1895, the Orinoco Company was organized under the laws of the State of Wisconsin, and on the following day the Manoa Company, Limited, conveyed to the said Orinoco Company the property described in the Fitzgerald concession until September 21, 1892, excepting, however, the Pedernales asphalt mine and the Imataca iron mine. On February 4, 1896, the Orinoco Mining Company was incorporated under the laws of the State of Wisconsin, and on February 10, 1896, the Orinoco Company conveyed to the Orinoco Mining Company all its rights in the concession as transferred to it by the Manoa Company, Limited (i. e., reserving and excepting the Pedernales asphalt mine and the iron mine of Imataca).

The Orinoco Mining Company, on October 1, 1896, filed in the office of the Secretary of State of the State of Wisconsin an amendment to its articles of association, changing its name to Orinoco Company, Limited, and on October 17, 1896, the Manoa Company, Limited, and the Orinoco company certified to the transfer of title of all the lands, rights, interests, privileges, and immunities originally granted by the Fitzgerald contract (except as to the asphalt and iron mines) to the said Orinoco Company, Limited. The Manoa Company, Limited, on May 15, 1895, conveyed to William M. Safford the location of the Imataca iron mine, and the same company had, on October 17, 1895, conveyed to Samuel Grant the Pedernales asphalt deposits. These conveyances are evidently explanatory of the reservations and exceptions as to the said properties in the transfer above set forth.

On November 20, 1896, the President of the Republic of Venezuela, "wishing to put an end to the difficulties which have presented them-

selves, preventing the exploitation of the delta of the Orinoco, otherwise known as the 'Manoa,' referred to in the resolutions of June 18, 1895," recognized as valid the transfer made by the "Manoa Company, Limited," to the "Orinoco Company, Limited," of all its rights and titles to and in the said concession, with exception of the mine of iron "Imataca," situated on both banks of the stream Corosimo in the Manoa district of the old Federal Territory Delta, and the 500 hectares of public lands which comprise its superficial area, and of the mine of asphalt called "Minas de Perdernales," situated on the island of the same name, together with the 200 hectares of public land destined for its exploitation. He acknowledged likewise as valid the work and other acts of the "Orinoco Company, Limited" (successors to the "Manoa Company, Limited"), done and performed by them in fulfillment of the terms of the resolutions of June 18, 1895, and disposed that the said company be granted the exemption from payment of custom-house duties on machinery and other effects imported through the Ciudad Bolivar custom-house, destined to the works of said concession, and that all facilities be granted to the interested parties for the aforesaid exploitation, providing such facilities be not in opposition to the laws and resolutions of the Republic in force.

On December 30, 1896, James A. Radcliffe, receiver of the Manoa Company, Limited, William M. Safford, and George N. Baxter, trustees, conveyed to the Orinoco Company, Limited, its successors and assigns, the contract and concession of September 22, 1883. The deed recites that at a special term of the supreme court of the State of New York, a court of general jurisdiction, sitting in the county of Kings, on the 3d day of March, 1896, it was among other things ordered, adjudged, and decreed by the said court in a certain action then pending, and which was commenced on the 14th day of February, 1896, between Randolph Stickney and the Manoa Company, Limited, for a sequestration of the property of said company, pursuant to the laws of the State of New York, that the said James A. Radcliffe be appointed permanent receiver of said Manoa Company, Limited; and that by its judgment of November 11, 1896, said court ordered the said receiver to sell at public auction all the rights, title, and interest of said Manoa Company, Limited, in and to said concession to the highest bidder, and make report of said sale to the court; and that said receiver did on the 28th day of November, 1896, sell said property to William M. Safford and George N. Baxter, they being the highest bidders; and that said report of the receiver was afterwards confirmed and the receiver ordered to make a deed to the parties named, which was done; and that the said Safford and Baxter declared that they bid in said property as trustees for the Orinoco Company, Limited, and that the said Safford and Baxter, in the execution of said trust, joined in said deed to the Orinoco Company, Limited.

The Orinoco Company, Limited, on July 22, 1897, entered into a contract with the Orinoco Iron Company, a corporation organized under the laws of the State of West Virginia, whereby it granted to the said iron company the right to mine and ship any and all deposits of iron ore on the Fitzgerald concession, which it had the right to exploit under its contract for the unexpired term thereof in consideration of certain stipulated royalties. The president of the Orinoco Iron Company was Albert B. Roeder, its secretary was Benoni Lockwood, jr., and its treasurer was James E. York.

It appears from the evidence that on the 30th day of March, 1895, George Turnbull, then residing in London, entered into a contract with one Joseph Robertson, of London, as trustee of a syndicate thereafter to be formed, and called the Orinoco Iron Syndicate, Limited, under the English companies acts of 1862 to 1890, the object of which syndicate was to examine, test, and work the "Imataca" iron mine and to output and market iron ore, timber, and other commercial products on the land during the period of one year from the date of their shipment of the first cargo therefrom; if the said syndicate should be satisfied with the result of their trial they were to register a limited company under said acts within twelve months for the purpose of acquiring the said property, which Turnbull agreed to lease and convey, with his whole rights and interests therein and the ores and minerals therein and thereunder. The syndicate was bound, on or before January 15, 1896, to intimate to Turnbull whether or not they intended to go on with the formation of said company. The Orinoco Iron Syndicate was afterwards formed, and on September 18, 1895, adopted the agreement between Turnbull and Robertson of March 30 previous.

The English company, the Orinoco Iron Syndicate, Limited, chartered the schooner *New Day*, and shipped therein to Venezuela its employees, machinery, materials, and supplies. The *New Day* proceeded to Manoa, where, on January 20, 1896, the machinery, materials, and supplies were landed. For failure to land at the proper port of entry at Ciudad Bolivar, the *New Day* and her cargo were denounced by Gen. Joaquin Berrio, the then administrator of customs at said port, and proceedings were instituted in the national court of hacienda of Ciudad Bolivar, against the schooner, her captain, and the Orinoco Iron Syndicate, Limited, resulting in a judgment on May 9, 1896, imposing a fine upon the syndicate of 249,985.17 bolivars. This judgment was affirmed on September 24, 1896, by the high federal court. On November 14, 1896, the court of hacienda decreed the embargo of all the rights, shares, and belongings which the Orinoco Iron Syndicate had in the lands and mines of Manoa. On October 18, 1898, the said court ordered the sale by public auction of the rights of exploitation acquired by the Orinoco Iron Syndicate, Limited, in the iron mines of Manoa, situated on both banks of the Corosimo stream, so as to pay with the product the duties owing, according to the liquidation made, to the national treasury and to General Berrio, denouncer and apprehender of the contraband introduced, and the other expenses and costs of suit; that the said right of exploitation acquired in the iron mine of Manoa by the said company had been appraised, by experts appointed for that purpose, at 200,000 bolivars; that the rights which the company had in the mine of Manoa included 500 hectares of surface, according to the acknowledgment of right made by the National Executive in a resolution of November 20, 1896.

Pursuant to the above-cited order of the court of hacienda, the judicial sale took place in the said court on November 18, 1898. Benoni Lockwood, jr., being the highest bidder at the sale, was declared the purchaser of the property sold, upon his offer of 120,000 bolivars, to be paid within fifteen days from the date of sale. Robert Henderson was nominated the depository. The court declared that the condition stipulated in Lockwood's proposition being complied with, he should

be put in possession of the auctioned rights, and that a certified copy in due form of the sale should be issued to him to serve as title of property. The time for payment was extended to December 20. On the 19th Carlos Hammer, with power of attorney from Benoni Lockwood, jr., paid into the court the sum of 120,000 bolivars, the purchase money of the Manoa or Imataca Mine, and demanded a certificate of sale. The court declared well and duly performed the payment of the purchase money, and ordered that the proper certificate be issued to Lockwood, and that he be given, in virtue of his title, the actual possession of said mine. The power of attorney executed by Lockwood to Hammer states that the purchase of the mine was made by him in the name of and representing the Orinoco Company, Limited, and that in consequence the title of the property must be made out in favor of said company, to which corporation the rights exclusively belonged by virtue of the purchase made by him.

In its memorial the Orinoco Company, Limited, alleges that it adopted this course with the object of quieting its title to the "Imataca" iron mine as against the claims of George Turnbull.

On November 29, 1898, Benoni Lockwood, jr., in consideration of the sum of \$23,026 to him paid by the Orinoco Company, Limited, conveyed to the said company all his rights, title, and interest in and to the "Imataca" iron mine, meaning and intending to convey all his rights, title and interest in and to the premises purchased by him at a judicial sale at Ciudad Bolivar on the 18th day of November, 1898.

Mr. Turnbull protested against the judicial sale under the execution issued from the national court of hacienda at Ciudad Bolivar, and on November 21, 1898, filed a petition in the second hall of the high federal court at Caracas that the proceedings relative to the case in the said court of hacienda be remitted to the second hall of the high federal court for review; and thereafter the latter court on February 21, 1899, held that Turnbull had proven by authentic documents which he had exhibited and which were in the expediente that he was the legitimate owner of the mine referred to and that the said court declared without force the auction sale carried out with reference to the iron mine "Imataca" and that said mine was not affected by said sale. But afterwards upon appeal to the third hall of the high federal court the foregoing judgment of the hall of second instance was, on May 6, 1899, reversed and declared to be revoked "*entodos sus partes*" (in all its parts).

In the month of May, 1899, George Turnbull brought an action in the court of first instance of the federal district, civil division, against Benoni Lockwood, jr., the Orinoco Iron Company, and Gen. Joaquin Berrio for damages resulting from the condemnation proceedings and sale at Ciudad Bolivar, alleging that the English syndicate, the Orinoco iron syndicate, had had no right whatever in the Imataca mine, and that therefore the execution against said mine was illegal and the sale thereunder void. Benoni Lockwood, jr., having declared before the court at Ciudad Bolivar that he was acting on behalf of the Orinoco Company, Limited, Turnbull afterwards joined said company in the action, in order, as the court states, "that it should be declared that said company had no right of action against him nor claim over his mine Imataca *by virtue of the so-called auction sale* which took place at Ciudad Bolivar before the national judge of hacienda, since the

English syndicate had no rights." On jurisdictional grounds the claims against Berrio were withdrawn. The cause then proceeded, counsel for the remaining defendants answering in obedience to the directions of the court, but not in any respect accepting the jurisdiction and the validity of the proceedings. The court then sustained its jurisdiction against Lockwood and the American company and entered judgment as follows: On the claim for damages, that the proof for Turnbull was insufficient and judgment was accordingly entered for Benoni Lockwood, jr., and the corporation sued; and as to the second part of the action the court held that, as George Turnbull has, with the documents registered in the suboffice of the federal district and dated the 14th and 19th of March, 1888, issued by the President of the Republic, proved his ownership of an iron mine situated at Manoa, in the State of Guayana; and also his ownership of 500 hectares of unreclaimed lands which form the superficies of the iron mine denominated Imataca, and by the resolution of the 20th of November, 1896, that the said lands and mine constitute a property legally acquired by Turnbull apart from the Manoa concession which had been declared forfeited; and as the Orinoco Company, Limited, opposed this title by a title given by an auction on the 18th of November, 1898, before the judge of hacienda of Ciudad Bolivar, which auction took place in virtue of an execution against the Orinoco Iron Syndicate, Limited, an English syndicate, and as in this respect the court was of opinion that the said title is not sufficient to lessen the rights and privileges which Turnbull has as proprietor in the said mine, because, in the first place, it did not appear that Turnbull intended to grant his property or any part thereof to any company, and much less was it proved before the judge and auctioneer that the Orinoco Iron Syndicate, Limited, had rights over the mine now in dispute, because for that purpose it would first have been necessary to have sought for the title from which the existence of those rights was derived in order to make the auction sale feasible and to furnish the purchaser such knowledge of what he was buying; that in the presence therefore of the title shown by plaintiff and that set in opposition by the American company, the court declared that it must maintain George Turnbull in the rights and privileges granted by law to legal owners and give judgment against the Orinoco Company, Limited, holding that said company had no rights of action against Turnbull and no rights to enforce on his mine Imataca *by reason of the title herein referred to.*

The foregoing judgment was rendered in the hall of the tribunal of the first instance, civil division of the federal district in Caracas, on June 7, 1900. On July 27, 1900, in the magistrates court of Ciudad Bolivar it was decreed:

That having considered the application of the judge of the district of Della Costa, dated the 20th instant, in which, as the executing officer of a judgment of the civil division of the court of first instance, he asks the assistance of armed forces to enable him to execute the said judgment, by reason of the resistance on the part of parties required and condemned to deliver possession of the Imataca mines, situated in the jurisdiction of Della Costa; and also considering the representation of Mr. Juan Padron Uztariz as the attorney of George Turnbull, in whose behalf the delivery of said property is to be made under said judgment. This civil and military court in conformity with the legal prescriptions in the matter of civil authorities aiding the judicial, as is proper in this case, doth order that there shall be placed at the disposal of said judge of the district of Della Costa twenty armed men under the command of Colonel Uncatogui belonging to the military force of this place in the name of the State to enforce said judgment.

Accordingly on August 4, 1900, proceedings were taken as set forth in the following certificate:

Juan E. Pino, acting secretary of the judge of the district in commission certifies: That, pursuant to the measures adopted by the mandate of execution given on the 19th day of June, 1900, by the judge of the civil court of the first instance in the federal district, there is found an act as follows: In the Manoa region of the Della Costa district, on the 4th of August, 1900, there was constituted a judge of the said district, at the iron mine of Imataca, on the side of the mountain, in which location is found the principal location of said mine. And in view of the objection made by the representatives of the Orinoco Company, Limited, to the transfer of the effects belonging to George Turnbull, then proceeded to comply with the mandate and execution given on the 19th of June, 1900, by the judge of the court of first instance in the civil court of the federal district, by taking formal possession of said mine and all its appurtenances in the presence of the witnesses Jose Maria Escobar, Augusto Parejo Gaiños. The court being held at the above-mentioned place, the above-mentioned judge solemnly declared in the name of the Republic and by the authority of the law that George Turnbull, represented by Juan Padron Uztariz, is placed in possession of the immovables, consisting of 400 hectares to the north of the Corosimo River and 100 hectares to the south of the same river, conforming to the title of the said property given the 14th of March, 1888, and reaffirmed the 20th of November, 1896. Having accomplished which, the court was afterwards transferred to the banks of the Corosimo River, where were found the buildings and other appurtenances of the above-mentioned mining establishment, and it was again declared equally in the name of the Republic and by authority of the law that the owner, George Turnbull, is placed in possession of the following property: The railroad line that goes to the mine; its rolling stock and other appurtenances; a large house and two small living houses; two sheds covered with zinc; two small houses covered with zinc; a house and six sheds of straw for laborers, and about 3,500 tons of iron ore, situated at the above-mentioned river and taken out of the mine. There presented themselves H. H. Verge and P. Mattea, manifesting, the first in his character as superintendent of the Orinoco Company, Limited, and the second authorized by George B. Boynton, who protested in the most solemn manner against the above-mentioned acts and in consequence made a written protest which is in accordance to above action. Furthermore the court imposed on all those present the obligation that they are to respect all acts legally done and to abstain and avoid any act that might impede or interfere with the owner, George Turnbull, or his representative, in exercising the rights that they are entitled to.

In a communication addressed to the Secretary of State of the United States, dated December 18, 1900, G. H. Hinnau, "of counsel for George Turnbull," states that the court of first instance in the federal district at Caracas, being a duly constituted court of competent jurisdiction, had on June 9, 1900, finally and conclusively adjudicated and by decree confirmed the tenor of the resolution of the Government of Venezuela finding, as in said resolution recited, that the title to the Imataca mines was vested in said Turnbull, and that no other person had or possessed any right, title, or interest therein, and having no such title, any possession adverse to said ownership was unlawful, and that from such findings and a mandate and decree thereon made by said court, dated the 19th day of June, 1900, there is no appeal; that pursuant to the adjudication and mandate of said court and in the enforcement and effectuation thereof, the proper authorities on the 4th day of August, 1900, placed said Turnbull, through his agent, Juan Padron Uztariz, in possession of the property and its appurtenances, and that the court, for the purpose of thereafter maintaining Turnbull in the lawful maintenance of such property, ordered and decreed by perpetual injunction that all persons be thereafter enjoined and restrained from impeding or interfering with the rights of said Turnbull in and to said mines and property.

It is, however, to be observed that the judgment of the civil division of the court of first instance of the federal district is *res adjudicata* solely upon the issue properly before it for its determination; that the Orinoco Company, Limited, was a party to the proceedings in said court only in its capacity as grantee of the rights and interests, if any, obtained by Benoni Lockwood, jr., by virtue of the judicial sale at Ciudad Bolivar on November 18, 1898, under the execution against the Orinoco Iron Syndicate, Limited; that the judgment of the court was that "in the presence of the title shown by plaintiff (Turnbull), and that set in opposition by the American Company (to wit, as the record shows, 'a title given by an auction on the 18th of November, 1898, before the judge of hacienda of Ciudad Bolivar'), the tribunal must maintain George Turnbull in the rights and privileges granted by law to legal owners," and that "the company has no rights of action against him (Turnbull) and no rights to enforce on his mine Imataca by reason of the title herein referred to." In other words, the court held that the Turnbull titles of March, 1888, were to be sustained in opposition to the title obtained by Benoni Lockwood, jr., in virtue of the judicial sale, declared invalid, of November 18, 1898.

It is evident from the record that the prior valid and subsisting rights of the Orinoco Company, Limited, as cessionary of the Fitzgerald contract of September 22, 1883, were not before the civil division of the court of first instance of the federal district in the case of *George Turnbull v. Benoni Lockwood, jr., et al.*, and therefore that they are in no manner affected or determined by the judgment of said court in that action. Rulings of courts must be considered always in reference to the subject-matter in litigation and the attitude of the parties in relation to the point under discussion.

Moreover, as has been shown heretofore, jurisdiction of the Fitzgerald contract vested, constitutionally, in the high federal court alone.

On the 10th of October, 1900, it was, through the ministry of fomento, resolved:

Considering that the contract celebrated September 22, 1883, with Cyrenius C. Fitzgerald, and on which the Orinoco Company, Limited, now bases its right for the exploitation of the national riches in the delta of the Orinoco, and colonization of the lands conceded has now no legal existence, for that it was declared void for failure of performance of what was in it stipulated; that in April, 1887, the National Congress approved a contract celebrated with the North American citizen George Turnbull, in the same regions and with the same clauses, and in all equal, with that with the Manoa Company, Limited (cessionaire of Fitzgerald), declared void, which was also for the same causes declared in caducity on the 18th of June, 1895, and that on the same day of the said month and year this office issued an executive resolution restoring to the Manoa Company, Limited, the rights and privileges conceded by the original contract with Fitzgerald in 1883, and

Considering, first, the contract celebrated with C. C. Fitzgerald having been declared void for failure of compliance with article 5, this can not be considered in vigor without the intervention of a new contract approved by the National Congress; second, that the legislature of the State of Bolivar, in its ordinary session in 1899, adopted a joint memorial to the National Congress declaring that the company concessionaire of the contract celebrated with Fitzgerald had not complied in its fourteen years of existence with any of the clauses established in article 5 of the said contract, and that this interferes with the interests of the Venezuelans for exploiting the natural products of that region of the Republic; and, third, that according to the notes and reports forwarded to this office by the authorities of the different places of the region to which refers the concession already mentioned, all concur in the failure of performance of the same and of the palpable evil which it occasions, as well to the national treasury as to the individual industries, the Supreme Chief of the Republic has seen fit to dispose:

That the mentioned contracts are declared insubsistent.
 Let it be communicated and published:
 For the National Executive:

(Signed) RAMON AYALA.

The evidence presented here discloses that in the joint memorial adopted by the legislative assembly of the State of Bolivar it was by that body: "*Resolved: ARTICLE 1. To solicit the National Congress to order the necessary dispositions to the end that shall be petitioned by the competent organ and shall be declared by the high federal court the rescision of the contract celebrated by the National Executive with the citizen Cyrenius C. Fitzgerald, his associates, assigns, and successors, the 22d of September, 1883,*" which was approved by the Congress in session the 23d of May, 1884.

It is furthermore significant that in the National Congress on April 7, 1899, the special commission appointed to consider and report concerning the resolution of the legislative assembly of the State of Bolivar with reference to the Fitzgerald contract reported to the citizen president of the chamber of deputies proposing to the chamber that it remit said resolution to the National Executive in order that it resolve what is convenient; but that on April 26, 1899, when the chamber of deputies considered in session the foregoing report, the deputy, Doctor Martinez, proposed: "That at the end of said report, where it says, 'in order that it resolve what is convenient,' it shall say, '*in order that they be submitted to the high federal court, to the end that that tribunal shall resolve the affair in conformity with justice.*'" And this proposition was voted approved.

Clearer and more conclusive evidence (except the constitutional provision itself) could not be required than the foregoing action of the chamber of deputies on April 26, 1899, and the decision of the high federal court in the New York and Bermudez case, hereinbefore cited, to demonstrate that jurisdiction of the Fitzgerald contract vested solely in the high federal court, and that such executive resolutions as those of September 9, 1886, and of October 10, 1900, declaring said contract insubsistent, are illegal assumptions of power and null and void.

The question whether or not the grantees of the Fitzgerald concession had fulfilled its conditions was remitted by the agreement itself to the competent tribunals of the Republic to be there determined in conformity with the laws. But it may be remarked that the evidence shows that various high officials of Venezuela, including the governor of the Federal Territory of the Delta, certify that within the time limit of the contract the concessionaires had commenced the work of exploitation "in conformity with what is established in the contract." When the Government, on June 18, 1895, authorized the Manoa Company, Limited, to renew its work of exploitation and colonization, the reports made by the company to the Government presented in evidence show that the company actively resumed the prosecution of the enterprise. Furthermore, it is to be observed that complaints of non-fulfillment of the Fitzgerald contract come with small grace from the Government of Venezuela. Evidence is not wanting here that shortly after the signing of the alleged contract between Guzman Blanco and George Turnbull in Europe, the Government of Venezuela ordered the governor of the Federal Territory Delta to require the Manoa Company, Limited, to suspend its operations. The hostile, arbitrary,

and vacillating course of the Government toward the grantees of the Fitzgerald concessions from the illegal annulment of their contract on September 9, 1886, to the equally illegal annulment on October 10, 1900, was calculated to paralyze every effort to fulfill their obligations, destroy their credit, create expensive litigation, and involve in financial ruin every person induced to invest his capital in the company's enterprises in reliance upon the good faith of the Venezuelan Government. Enterprises of pith and moment require for their successful prosecution and depend upon the stability of rights the protection of law, the sacredness of obligations, and the inviolability of contracts. Of all these elements necessary to success the grantees of the Fitzgerald contract were deprived by the arbitrary acts of the Venezuelan Government, which in equity and justice can not now be heard to complain that the said grantees did not, in the presence of such obstacles and in opposition to the unlawful exercise of superior force, fulfill their obligations.

The twelfth article of the collusive Guzman Blanco Turnbull contract of January 1, 1886, shows that George Turnbull had full knowledge of the exclusive rights and privileges possessed by the grantees of the Fitzgerald concession within the territories described. With this knowledge, Mr. Turnbull's efforts then and thereafter were persistently directed toward the dispossession of said grantees from the rights lawfully vesting in them by virtue of that contract. His status throughout the history of this remarkable case has been that of a mere stranger and trespasser seeking to divest the prior lawful and subsisting titles vesting by and through the Fitzgerald concession.

That he who has the precedence in time has the advantage in right is a fundamental maxim of the law; not that time, considered barely in itself, can make any such difference, but because the whole power over a thing being secured to one person this bars all others from obtaining a title to it afterwards. (1 Fonbl. Eq., 320.)

The basis of Mr. Turnbull's claim against the Government of Venezuela presented to this Commission is the alleged interference with and deprivation of the titles obtained by him in 1888 to certain lands and mines. But these titles were knowingly sought and secured by him in derogation of the rights of the grantees of the Fitzgerald concession. His titles were void and his possession unlawful *ab initio*.

Mr. Turnbull complains of the Venezuelan Government:

First. That by reason of certain acts of said Government he was prevented from either improving or selling his said property, and that he thereby sustained a loss of upward of \$50,000.

Second. That by reason of certain other acts of the Venezuelan Government he was deprived of the consideration agreed to be paid him under his contract of the Orinoco Iron Syndicate for the lease of said property and was unable to make any other contracts with respect thereto or to develop or take the products of said mines and was thereby damaged to the extent of £140,000.

Third. That by reason of certain acts of the Venezuelan Government he was deprived of the use and occupation of said property and prevented from concluding any contracts or to use, develop, lease, or sell said property or the minerals or product thereof from November 20, 1896, to June 8, 1900, and was thereby damaged in the sum of \$500,000.

Fourth. That between the years 1893 and 1900 he expended and caused to be expended the sum of \$120,000 in the United States and

England in travel, legal disbursements, fees to the Government of Venezuela, legal expenses of negotiating, promoting, and procuring six several contracts for the leasing, testing, and sale of said property, all of which contracts were made ineffectual and void by reason of the spoliation of titles to said property by said Government and the withholding of the use, possession, and occupation thereof.

The Manoa Company, Limited, in its memorial alleges, respecting the damages and injuries caused said company by the acts of the Government of Venezuela:

First. That if, by reason of the force and effect of the resolutions of September 9 and September 10, 1886, and the act of Congress of April 28, 1887, or of any or either of them, said company was divested of its rights, titles, and interests in and to the Fitzgerald concession, it was damaged thereby in the sum of \$5,000,000.

Second. But that if the said resolutions and act did not have that effect it was, by their consequences, prevented from the development and exploitation of the resources thereof and the receipts of the rents, revenues, royalties, and profits which it would have derived therefrom between the date thereof, when its rights thereto had been repudiated by the Government, and the date of the resolution of June 18, 1895, when its said rights were confirmed, reaffirmed, ratified, acknowledged, and reestablished; which rents, revenues, royalties, and profits said company estimates, in view of all the then existing conditions and circumstances of the case, would have amounted to the sum of \$300,000.

Third. That of the resolution of July 10, 1895, by its force and effect divested said company of its right, title, and interest in or to the mine of asphalt, it was damaged in the sum of \$250,000; but that if it did not have that effect or operation, then the said company was damaged thereby in the nominal sum of \$1,000.

Fourth. That by the effect thereof as a slander of its title to the entire concession and each and every part of it, by the assertion immanent in that resolution and an obvious implication from it, that the title and rights of the said company to its entire concession were liable at any time to be arbitrarily and summarily divested and annulled in like manner either totally or in fragments at the discretion or caprice of the executive authority and without due process of law, it was damaged in the sum of \$2,000,000.

Fifth. That if the resolution of November 20, 1896, by its force and effect divested said company of its rights, title, and interest in or to the mine of Imataca and its appurtenant lands, it was damaged thereby in the sum of \$1,000,000; but that if it did not have that effect, then said company was damaged thereby in the nominal sum of \$1,000.

The Orinoco Company, Limited, complain of the Government of Venezuela:

First. That on account of the acts and doings of said Government and its officers touching the sale under execution issued from the national court of hacienda at Ciudad Bolivar and for the damages caused by it and them to said company by the deprivation of said company of its lawful possession of the mine of Imataca under the claim that the Government had a lien thereon in consequence of the judgment in said court against the Orinoco Iron Syndicate; and by the exaction and appropriation of the purchase price thereof and the costs,

expenses, and disbursements caused thereby, and the ejectment from and deprivation of said mine, that said company was damaged in the sum of \$125,000.

Second. That by reason of the executive resolution of the 10th of October, 1900, declaring insubstantial the contract of September 22, 1883, the company lost the profits of a certain contract entered into by it with Charles Richardson and his associates for the lease of the asphalt mine on the island of Pedernales and was thereby damaged in the sum of \$100,000.

Third. That by reason of said resolution the company lost the opportunity of completing an agreement with Messrs. Moore, Schley & Co. for the exploitation of the Imataca iron mine, and was damaged thereby in the sum of \$100,000.

Fourth. That the company on the 10th day of October, 1900, had concluded negotiations with Messrs. Power, Jewell & Duffy, of Boston, whereby it was stipulated that for a certain consideration the said parties should pay into the treasury of said company as and for a working capital with which to prosecute its intended operations on the concession the sum of \$2,800,000, but that by reason of the executive resolution of October 10, 1900, the said parties refused to execute the proposed contract and abandoned the same, whereby the company lost the benefit and advantage thereof and was damaged in that sum.

Fifth. That if, under the constitution and laws of the Republic of Venezuela, the resolution of October 10, 1900, had the effect to divest said company of its rights, titles, and interests in and to the contract of September 22, 1883, the company was damaged in the sum of \$10,000,000; and if it be otherwise and said resolution was an act of usurped authority beyond the competence of the executive power, then the company was damaged thereby in the aggregate of the damages mentioned as having been occasioned thereby, but that the company advisedly limits its claim against the Republic of Venezuela for the damages occasioned by said resolution of October 10, 1900, to the sum of \$5,000,000, for which it demands the judgment and award of this tribunal.

Sixth. That if it be considered that by force of the constitution and laws of Venezuela the Orinoco Company, Limited, has been divested of its rights, titles, and interest in and to certain land and mining concession granted by the Government since the date of the resolution of October 10, 1900, the company makes claim on that account for the reasonable value thereof, which it alleges upon information and belief exceeds the sum of \$1,000,000; but if it be considered that the said land and mining concessions are of no force or validity as against the elder patent and paramount title of said company under its contract, then the company claims only nominal damages for and on account of the granting of the same in manner and form, but without legal effect upon the right of said company to have and exploit the same.

In view of all the foregoing I am of the opinion:

First. That the contract-concession entered into on the 22d day of September, 1883, by and between the Government of Venezuela and Cyrenius C. Fitzgerald, granting to said Fitzgerald, his associates, assigns, and successors, for the term of ninety-nine years, the exclusive right to develop the resources of certain territories therein described, and the exclusive right of establishing a colony for the purpose of developing the resources already known to exist and those not yet

developed in the same region and other rights, privileges, and immunities therein specifically enumerated, is, and since the 29th day of May, 1884, has been, a valid subsisting contract, lawfully vesting in the grantee, Cyrenius C. Fitzgerald, his associates, assigns, and successors, all the rights, privileges, and immunities in the said contract set forth.

Second. That George Turnbull obtained no rights of property either in the concession as a whole under and by virtue of the alleged contract of January 1, 1886, or to the lands and mines of Pedernales and Imataca under and by virtue of his alleged titles of 1888.

Third. That the Fitzgerald contract-concession being subsistent, the Manoa Company, Limited, is entitled to an award generally for the wrongful interference with and deprivation of the exercise of its rights and privileges under the said contract-concession by the Government of Venezuela from the 9th day of September, 1886, to the 18th day of June, 1895, justly commensurate with the loss or injury sustained thereby; and in particular to an award for damages, however nominal, for injuries sustained relative to the Pedernales asphalt mine and to the iron mine of Imataca.

And fourth. That the Fitzgerald contract-concession being subsistent, the Orinoco Company, Limited, is entitled to an award generally for the wrongful interference with and deprivation of the exercise of its rights and privileges under the said contract-concession by the Government of Venezuela from the 10th day of October, 1900, to the 14th day of January, 1901, justly commensurate with the loss or injury sustained thereby; and in particular to an award for the amount paid into the national court of hacienda on the 19th day of December, 1898, together with interest on said sum at the rate of 3 per cent per annum from said date to the 31st of December, 1903, the anticipated date of the final award by this Commission.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George Turnbull, claimant.	} No. 45.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

THE UNITED STATES OF AMERICA ON BEHALF of the Manoa Company, Limited, claimant,	} No. 46.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

THE UNITED STATES OF AMERICA ON BEHALF of the Orinoco Company, Limited, claimant,	} No. 47.
<i>v.</i>	
THE REPUBLIC OF VENEZUELA.	

DOCTOR GRISANTI, *Commissioner*.

"The Manoa Company, Limited," sets forth a claim against the Republic of Venezuela, the memorial of which ends as follows:

Your orator claims, however, that by the effect thereof as a slander of its title to the entire concession and each and every part of it, by the assertion immanent in that resolution and an obvious implication therefrom, that the title and rights of the

said company to its entire concession was liable at any time to be arbitrarily and summarily divested and annulled in like manner either totally or in fragments at the discretion or caprice of the Executive authority and without due process of law; that it was in fact damaged in the sum of \$2,000,000 and more; and if said resolution of November 20, A. D. 1896, by its force and effect divested said company of its said right, title, and interest in or to said mine of Imataca and the appurtenant lands aforesaid, that it was damaged thereby in the sum of \$1,000,000; but if it did not have that effect or operation, then that said company was damaged thereby in the nominal sum of \$1,000.

On September 22, 1883, a contract was celebrated between the Government of Venezuela and Cyrenius C. Fitzgerald, approved by the National Congress on May 23, 1884, whereby was conceded unto said Fitzgerald, his associates, successors, and assigns, for the term of ninety-nine years, the exclusive right to exploit the resources of the territories of national property referred to in article 1 of said contract; as also the exclusive right for the same term to establish a colony, to develop the resources known, and also those as yet not exploited in said region, including asphalt and coal; for the purpose of establishing and cultivating on as high a scale as possible agriculture, breeding of cattle, and other industries and manufactures which may be considered suitable, setting up for the purpose machinery for working the raw material, exploiting and developing to the utmost the resources of the colony.

Fitzgerald undertook to commence the work of colonization within six months, counting from the date when said contract was approved by the Federal council (art. 5)—that is to say, from the date of its being granted (September 22, 1883)—the Government having promised that, if in its judgment it should be necessary, it should grant to the contractor a further extension of six months for commencing the said works (art. 10).

On the 7th day of February, 1884, Dr. Herbert Gordon, acting as Mr. Fitzgerald's attorney, requested that said Mr. Fitzgerald should be conceded the further extension of time referred to in said article 10; and by resolution of the 19th of the same month it was so conceded, to be counted from the 22d of the following March.

In the course of said extension of time—on the 14th of June, 1884—Fitzgerald assigned the contract to "The Manoa Company, Limited," and on April 10, 1886, seven months and ten days after said extension had elapsed, Doctor Gordon, attorney for said company, addressed a petition to the minister of agriculture (fomento), the last part of which (pages 64, 65, and 66 of the record) is as follows:

Therefore, in compliance with instructions given me by the Manoa Company, Limited, I beg to apply to the Benemerito General President of the Republic, through your respectable organ, beseeching him most entreatingly and urgently to declare, by resolution, that to "the Manoa Company, Limited," are not imputable the circumstances which have prevented it, up to the present, from carrying out its words in accordance with the contract celebrated between the Government and C. C. Fitzgerald on September 22, 1883, of which it is an assignee; and that, therefore, said contract is in force and the company is in possession of all its rights, as in the extensions accorded will not be computed the time elapsed up to the present.

Throughout all of said solicitude, and particularly in the above-inserted paragraph, the Manoa Company (Limited) confesses through its attorney, Doctor Gordon, that at that date (April 10, 1886), a long time after the extension had expired, it had not commenced to fulfill the contract, and likewise admits considering it annulled. And considering only in fact that the company held such an opinion, can it be accounted for that the company should request the Government to promulgate a

resolution declaring: *That the causes which had prevented it from carrying out the contract are not imputable to it; that, therefore, the contract is in force and the company in possession of all its rights, as in the extensions accorded will not be computed the time elapsed.*

The above-mentioned petition was followed on September 9 by this resolution, to wit:

Resolved, Señor Heriberto Gordon, with power from Señor C. C. Fitzgerald, celebrated on the 22d of September, 1883, with the National Government, a contract for the exploitation of the riches existing in lands of national property in the Grand Delta, and the works ought to have been begun within six months of the aforesaid date. In spite of such time having elapsed without commencing said works the Government granted him an extension of time for the purpose, and inasmuch as said contractor has not fulfilled the obligations which he contracted, as stated in the report of the director of territorial riches, specifying in reference to article 5 of the contract in question, the councillor in charge of the Presidency of the Republic having the affirmative vote of the Federal council declares the insubsistency or annulment of the aforesaid contract.

In any other case the lawfulness of said resolution would be doubtful, but in the present one it is not, firstly, because the Manoa Company, Limited, has authentically declared the facts whereon it is based; secondly, because said company tacitly acknowledged the annulment of the contract, and, lastly, because the company itself made the National Government a judge as to the enforcement or termination of the contract when requesting it to declare the enforcement of said contract whereby it authorized the Government ipso facto to promulgate its annulment.

As an explanatory argument of the unlawfulness of the above-inserted resolution quotation is made of the judgment passed by the high federal court on August 23, 1888, declaring the insubsistency and nullity of the Executive resolution of January 4 of said year, whereby the contract of the "New York and Bermudez Company" was declared terminated and void.

Without discussing said decision, which in our opinion is erroneous, as shown by the reasonings contained in the voto salvado of three of the judges (Official Gazette, No. 7421, dated September 17, 1898), we shall circumscribe to establish that the case of the "New York and Bermudez Company," and that of the Manoa Company, Limited, are entirely different; whereas the claimant company, in the aforementioned petition, authentically confessed the insubsistency of its contract, the forfeiture of its rights, and requested the National Government to ratify the same, which confession and petition the "New York and Bermudez Company" did not make. And the most obvious evidence of the difference between the two cases is that the Manoa Company, Limited, did not apply to the high federal court to request that the resolution of September 9, 1886, be declared void.

The Manoa Company, Limited, alleges as the principal cause for preventing it from fulfilling the obligations contracted, the British authorities were apt to hinder its use and full power over a considerable portion of the territory marked out in article 1 of the contract.

In an article inserted in The Evening Post, New York, dated February 10, 1896, we find the following account:

Mr. Fitzgerald especially attributes the subsequent misfortunes, decadence, and collapse of the Manoa Company solely to the British invasion.

But there are some peculiar facts in this connection. Mr. Fitzgerald, when requested to point out on the map the location of the sawmill, indicated it as above specified. Now, that particular spot is to the westward of the Schomburgk line, and

everyone familiar with the geographical aspects of British claims in the Guiana controversy knows that they never extended in the interior so far as to approach any part of the course of the Orinoco River.

Moreover, the Anglo-Venezuelan diplomatic correspondence appertaining to McTurk's proceedings of 1884 shows that his assertion of British jurisdiction did not extend farther west than the Amacuro River, i. e., the coast limit of the Schomburgk line. Guzman Blanco, as Venezuela's plenipotentiary in London, reviewed in a note to Lord Salisbury dated July 28, 1886, all the circumstances of the McTurk affair; and in it there is no allusion to forcible British acts west of Amacuro. In his communication Guzman Blanco cites a note written by McTurk from the right bank of the Amacuro to Mr. Thomas A. Kelly, resident manager of the Manoa Company, stating that he (McTurk) had received notice that the company was going to erect a sawmill at the mouth of the Burima and warning him against such encroachment. This seems to establish that the British Government's interference with the Manoa Company in 1884 had in view only the prevention of the company's intended programme for intrusion east of the Schomburgk line, and involved no interference with the sole improvements made by the company up to that on the grant.

Accordingly there was nothing to deter the Manoa corporation from pushing forward its mercantile, agricultural, commercial, manufacturing, shipping, and mining business in territory exclusively Venezuelan, with the Orinoco sawmill settlement as a basis. Besides, the really valuable portions of the concession for the purposes of immediate development (including the Pedernales asphalt property) were those which lay to the west of the Schomburgk line, and which could have been worked in absolute security of ownership under the laws of Venezuela.

An affidavit of Mr. Jerome Bradley, ex-president of the Manoa Company, Limited, rendered on October 21, 1886, filed at the United States circuit court of Brooklyn (case of Everett Marshall v. The Manoa Company et al.) reads as follows, to wit:

I have read the affidavit of C. C. Fitzgerald, verified July 30, 1887. It is untrue that I was informed by his (Fitzgerald) son George, upon the latter's return from Venezuela, that the lumbering operations upon said grant were discontinued in 1884, owing to the interference of the British Government claiming the territory, but, on the contrary, I allege that the same were discontinued for the reason that the Manoa Company did not pay and had not the means to pay the few men employed by them to cut lumber and transport it to the sawmill. That the sawmill spoken of was not upon that portion of said grant to which a claim was made by the British Government. The said sawmill was distant from that portion of the grant over 50 miles. (Taken from an insertion of Mr. Turnbull, appended to this claim.)

This shows that the British invasion is only a pretext alleged by the claimant company so as to conceal the real cause of its collapse, which was its inability to raise funds for commencing the works of colonization and fulfilling the other obligations to which it was bound under the contract. Moreover, the company never protested against the aforementioned resolution (although said company asserts to the contrary), nor applied to the Federal court to demand its annulment. Said company was well aware that on lawful grounds it was at a loss, that the Executive act was based on true facts, and in conformity with justice.

On January 1, 1886, Gen. Guzman Blanco, envoy extraordinary and minister plenipotentiary of Venezuela to various courts of Europe, celebrated a contract on behalf of Venezuela with Mr. George Turnbull, the same as that as the Manoa Company, Limited; but said contract besides requiring for its legal validity the approval of the President of the Republic, with the affirmative vote of the Federal council, as also the sanction of Congress (article 66, attribution 6th of the constitution of 1881), in article 12 stipulates as follows:

This contract shall enter into vigor in case of the becoming void, through failure of compliance within the term fixed for this purpose of the contract celebrated with Mr. Cyrenius C. Fitzgerald, the 22d of September, 1883, for the exploitation of the same territory.

The referred-to contract was approved by the Federal council on September 10, 1886, and by Congress on April 28, 1887; that is to say, after the Manoa Company's contract becoming void; therefore the Turnbull contract did not deprive said company of the rights it had forfeited and which the Republic of Venezuela had newly acquired.

On June 18, 1895, and at the request of the Manoa Company, Limited, the National Government issued a resolution ordering that—

Due authorization be given to the said Manoa Company, Limited, within six months, reckoning from the date of this resolution, to renew its works of exploitation in order to the greater development of the natural riches of the territories embraced in said concession, hereby confirming it in all its rights stipulated and granted to C. C. Fitzgerald by the contract of September 22, 1883; and the said Manoa Company, Limited, shall be bound to report to the National Executive from time to time, through the organ of this ministry, of all and every work done by it in execution of said contract, in order that the Government may be enabled to judge of its compliance with the obligations of said contract, in conformity with the spirit and the magnitude of its stipulations.

The contract of the Manoa Company, Limited, being insubsistent through its not complying with the obligations thereunder, and also in view of the contents of the Executive resolutions dated September 10, 1886, could not, in virtue of the Executive resolution already inserted, revive said contract, but had to be issued anew in conformity with the national constitution of 1893; that is to say, that it had to be celebrated by the President of the Republic with the affirmative vote of the Government council and with the approval of Congress. Article 44 of the cited constitution, which establishes the duties of Congress, contains, under No. 16, the following:

To approve or deny such contracts of national interest as the President of the Union may have celebrated, and without which they can not be carried out into effect.

The Executive resolution of July 18, 1895, was, and is, absolutely inefficacious for giving existence to a contract that had become void ten years before.

The claimant company presents as a proof of the subsistence of its contract a resolution issued by the minister of fomento on February 26, 1886, which in no wise refers to said contract, but to another, as I shall forthwith show. Hence the text of the resolution:

UNITED STATES OF VENEZUELA,
MINISTRY OF FOMENTO, DIRECTION OF TERRITORIAL RICHES,
Caracas, February 26, 1886.

(Year 22 of the Law and 27 of the Federation.)

Resolved, In view of the petition of Citizen Heriberto Gordon, as attorney to C. C. Fitzgerald, assignee of the contract for colonization and exploitation of a part of the waste lands of the former State of Guayana, celebrated on May 21, 1884, the President of the Republic, with the vote of the Federal council, has resolved, that for the effects of the extensions of time fixed for the performance of said contract, the time elapsed since the 11th of June, 1885, up to this day be not computed, and that consequently the mentioned contract continue in force and the concessionaire is in possession of all his rights.

Let it be published.

For the Federal Executive.

(Signed) J. V. GUEVARA.

This resolution refers to the contract celebrated by Dr. Heriberto Gordon on his own behalf for colonizing the waste lands situated in the former State of Guayana, which are comprised within the limits expressed in article 1.

The Manoa contract was celebrated on September 22, 1883, and

approved by the National Congress on May 23, 1884; the Gordon contract was celebrated on May 20, 1884, and its approval by the legislature took place on the 12th of June of the same year.

Owing no doubt to a mistake which I have corrected, the claimant company has adduced the mentioned resolution as evidence.

"The Manoa Company" considers itself as being the owner of the Imataca iron mine and the Pedernales asphalt mine, alleging such ownership in view of article 4 of the contract; and whereas in 1888 the Government of the Republic conceded the definite title to said mines to Mr. George Turnbull, who previously fulfilled the formalities of law in force at the time, said company pretends to be dispossessed, and on the ground of so erroneous an opinion lays one of its claims.

The memorial states as follows:

Afterwards, on or about the 13th day of March, A. D. 1888, the authorities of the Republic conceded and issued to said Turnbull, in form of law, but without right, the definite title to the said iron mine of Imataca; and afterwards on the 28th day of June of that year they conceded and issued unto him in like manner and form the definite title to said mine of asphalt; and afterwards put said cessionaire in possession thereof and of the lands comprising the superficial area of the same and intended for their use in the exploitation thereof, the definite title of which lands also said authorities about the same time conceded to said Turnbull.

All of said arbitrary acts and doings were accomplished without notice to said company or other process, legal proceeding, or opportunity to them to be heard, and were in manifest derogation of its rights.

The basis which the claimant company pretends to have for the series of mistakes contained in the two foregoing paragraphs is article 4 of the contract, to wit:

ARTICLE 4.

A title in conformity with the law shall be granted to the contractor for every mine which may be discovered in the colony.

The claimant company holds that, in virtue of said clause, every mine discovered in the territory described in article 1 of the contract belongs to it, whoever the discoverer may be—a gross absurdity, which baffling interest alone could have led the claimant company to believe. The Government of Venezuela undoubtedly celebrated the contract which is being subject to analysis with a view to develop the natural riches and colonization of the mentioned territory, and according to the curious meaning given to article 4 by the company the exploitation of the mines depended exclusively on their will, so that if said company did not wish to discover any, nobody could denounce one, even if he discovered it.

Furthermore, the article provides that a title should be granted in conformity with law to the enterpriser on every mine he discovered, that is to say that if the company discovered a mine, it had, in order to obtain said title, to comply with the legal formalities.

Since 1883, when the Manoa contract was signed, up to 1887, when Turnbull obtained his title to the iron mine of Imataca and to the asphalt mine of Pedernales, five mining codes were in force in Venezuela, to wit: One of March 13, 1883; one of November 15, 1883; one of May 23, 1885; one of May 30, 1887, and an organic decree of the latter issued on August 3, 1887.

All of said codes are based on the principle that mines are the property of the State wherein they are situated, the administration alone of the same being in charge of the Federal Executive; therefore

it has to be taken for granted that whosoever wishes to exploit a mine, even he who discovers the same on his own grounds, must previously obtain a corresponding title thereto. For such obtainment the following formalities, briefly stated, have to be complied with:

Whoever may intend to exploit mines shall notify the president of the State or the governor of the Territory wherein the mines discovered are located, so that they may be entered in the register which must be kept by the secretaries of said functionaries (art. 11).

The petition for a concession shall be published once only in the Official Gazette of the State or Territory, as the case may be, or in default thereof in the paper of largest circulation, or if the latter neither exists, it will suffice to post placards or advertisements in the municipality where the mines are located, during thirty days (art. 12),

In every petition for mines, addressed to the president of the State or to the governor, accordingly, the number of mines requested must be expressed, as also the district, municipality, or colony wherein such are contained; if these are not private, municipal, or waste lands, the name must be stated of the engineer or public surveyor who is to measure them and make out the plans, which acts will take place after having published a notice to that effect in the press, in order to inform the adjacent neighbors thereof so that they may assist at said acts. Plans made only by engineers or surveyors having a title will be considered authentic and will alone produce legal effect in the matter of mensuration and plans contained in the records of mines (art. 16).

Once the mensuration takes place, the record, together with the plans made, is turned over to the mining inspector for him to verify the acts, which in its turn, and in addition to his report, is all forwarded to the ministry of fomento (art. 17). Thereupon, and in view of the record and its merits, the National Executive decides as to whether it will or will not grant the concession (art. 19).

The Manoa Company, Limited, should have complied with all said formalities in order to obtain a title to the aforesaid mines, and it did not do so. The only judicial effect which can be attached to article 4 of the contract is the right of the company to be preferred when in competition with any other discoverer, in conformity with articles 13, 14, and 15 of the referred-to law.

Article 13 provides that—

Those who think to have a right to oppose others who have petitioned for mining concessions in virtue of the preceding articles may present their petitions to the president of the State or to the governor of the Territory. These petitions will be registered in the same order of their presentation, stating the day and hour thereof, and the only notification to the parties concerned therein will be published in the Official Gazette three times in the course of a month, or placards and advertisements will be posted as mentioned in the foregoing article.

On the expiration of said thirty days, and the formalities provided in the preceding articles having been fulfilled, the President or governor, as the case may be, will decide with regard to the petitions for concessions, and his resolution will refer also to the merits of oppositions, if such oppositions have been made.

After said decision has been given, no oppositions will be admitted and the favored party or parties will be authorized by the President or governor, accordingly, to proceed to the exploration and other preparatory acts required for putting the record in a condition to be considered, and to enable him to issue or deny a title of concession, reporting the same to the National Executive (art. 15).

The provisions quoted are those of the law of November 15, 1885.

If, as before stated, whenever a person discovers a mine in his own territory, he must, in order to obtain a title thereto, comply with the formalities provided under the respective law, all the more reason why the claimant company should have complied with the same is that under the contract of September 22, 1883, no other right to the terri-

tory designated in article 1 was conceded to it than that of exploiting the natural riches therein contained.

In the opinion of the Venezuelan Commissioner, as the claimant company has no title of ownership of the aforesaid mines nor made any opposition to Turnbull when he attempted to acquire them, the claim of said company in regard to such mines is absolutely groundless.

The Manoa Company, Limited, has not shown that it fulfilled the obligations imposed under the contract of September 22, 1883, and consequently it is deprived of any right to claim for losses sustained through the annulment of said contract. In effect it would be the most flagrant violation of equity—which has to be the basis for the decisions of this tribunal—to acknowledge the rights which a contract concedes to a contractor without considering that said contractor has not fulfilled the obligations he was under, and that these are correlative to said rights.

Lastly, The Manoa Company, Limited, raises its claim to the exorbitant amount of \$2,000,000, without producing the slightest evidence to prove that the losses alleged amount to that sum. I am firmly convinced that this high tribunal has to be extremely exigent and conscientious in examining and appreciating the evidence produced in support of claims, as otherwise it might inadvertently serve the unbounded avarice of unscrupulous claimants.

GEORGE TURNBULL.

Let us now analyze Mr. Turnbull's claims.

One is for \$500,000, at which amount the plaintiff reckons the damages and losses which a judicial proceeding against the Orinoco Iron Syndicate caused him.

This part of the claim is perfectly groundless, as the said proceeding was quite legal, and the most decided and efficacious protection was tendered by the Government of Venezuela to Mr. George Turnbull's interests.

At the national court of finance at Ciudad Bolivar a judgment of confiscation was given against the English schooner *New Day*, of which the captain was John W. Baxter, on account of having discharged at Manoa a cargo that had been transshipped at Barbados from the steamers *Java*, *Yucatan*, *West Indian*, and *Spheroid*, and which cargo had been shipped at London and Liverpool by the Orinoco Iron Syndicate, Limited, to the port of Ciudad Bolivar, addressed to that same company, the manager of which was Mr. George Turnbull. And whereas Manoa is not a port authorized for foreign trade, nor had the schooner obtained a permit to discharge goods therein, the fact was denounced at the national court of hacienda, and said court in the exercise of its legal duties passed the corresponding judgment thereon. Said judgment having been finally determined, a sentence was delivered declaring that the schooner *New Day* together with its boat tackle and other appurtenances were liable to the penalty of confiscation, as also was the cargo discharged at Manoa, in conformity with No. 6, Article I, law 21, of the Code of Hacienda, to wit:

ARTICLE I. The objects which are liable to the penalty of confiscation are those included in each of the following cases:

- 1st. * * *
- 2nd. * * *
- 3rd. * * *
- 4th. * * *
- 5th. * * *

6th. The cargo of any ship for which attempts are made to load or unload, or which is found to be loading or unloading, or which has already been loaded or unloaded at ports not authorized therefor, or on the coasts, bays, creeks, rivers, or desert islands, without the permit and authorization of the proper law, and the ship, tackle, and other appurtenances will incur in the same penalty, as will also the canoes, boats, barges, or other sailing means which may have been made use of.

That same judgment condemned Capt. John W. Baxter to pay, mancomun et in solidum with "The Orinoco Iron Syndicate, Limited" as the owner and shipper of the cargo, the fiscal duties in addition to the double of those duties, etc., etc. Said condemnation is contained in the provisions of No. 3, article 2 of the cited law 21, to wit:

ART. 2. Besides the loss of the goods or other articles which have been caused the judgment for declaring confiscation, and of the ships or other sailing conveyances, carriages, beasts of burden, and appurtenances, as the case may be, the transgressors will incur the following penalties:

1st. * * *

2nd. * * *

3rd. In case 6 the captain of the ship will pay a fine in mancomun et in solidum with the owner of the goods and the shippers or unloaders of the same, amounting to double the customs duties, and the captain will be imprisoned for a term of from six to ten months.

The above-quoted sentence was confirmed by the high federal court in the following terms:

The minutes of the procedure having been analyzed by this department, it is noted: That the evidence clearly shows that the facts denounced by the administrator of the custom-house at Ciudad Bolivar; that all the extremities of law have been correctly complied with; that the sentence has not been applied for; that therein the penalties of law have been enforced, and that the fisc is not prejudiced, wherefore, in conformity with paragraph 2, article 34 of the law of confiscation administrating justice, authorized thereto by the law, this procedure is approved in all its parts. (Official Gazette, No. 6829, October 2, 1896.)

This sentence effected, and as the value of the ship and cargo did not suffice to cover the penalties imposed, the rights acquired for exploitation of the iron mine of Imataca by "The Orinoco Iron Syndicate, Limited," were denounced and offered for sale.

Mr. Turnbull, finding his ownership over the Imataca mine endangered in view of the aforesaid sale, applied to the Government requesting protection to his rights, and it was thus forthwith and most fully accorded in a resolution issued on December 10, 1898, by the ministry of agriculture, industry, and commerce (the name at that time of the ministry of fomento) with that view, as affirmed by the claimant himself in his memorial.

Said resolution was telegraphed to the judge of hacienda at Ciudad Bolivar, but arrived after the sale of the aforementioned rights of exploitation had taken place. Turnbull appealed to the court against the sale and the federal court decided that the appeal was unlawful.

Subsequently, Turnbull sued Messrs. Benoni Lockwood, jr., and the Orinoco Company, Limited, before the primary court of the federal district for damages and losses through their bidding at the sale of his Imataca mine, and furthermore sued said company for the annulment of the definite title derived from the sale. On June 7, 1900, a sentence was passed on this case declaring that "The Orinoco Company, Limited, had nothing to claim against him (Turnbull) nor had it any rights to claim on his Imataca mine, with regard to the title already mentioned."

The reasons assigned and the documents quoted prove most evidently that Mr. George Turnbull has no right whatever to demand anything

of the Government of Venezuela on account of the claim analyzed. On the contrary, the Government of the Republic always readily applied to protect Mr. Turnbull's interests. In order that this claim might be partially legal, it would have been necessary that the claimant had acknowledged that the sentence passed on the Orinoco Iron Syndicate, Limited, by the national court of hacienda at Ciudad Bolivar, and confirmed by the high federal court, was notoriously unjust or was a denial of justice; this Mr. Turnbull has not even attempted to do, and if he had, it would have been impossible for him to prove it, as said sentence is entirely in conformity with Venezuelan laws.

Mr. George Turnbull alleges that his having been deprived of the Imataca mine since the annulment of his contract (resolution of June 18, 1895) until his said Imataca mine was excluded from such annulment (resolution of November 10, 1895) impeded him from celebrating any contract, and from developing and receiving the benefits of the mines, and that thereby he lost 140,000 bolivars.

Turnbull ascribes the aforesaid loss to the fact that "The Orinoco Iron Syndicate, Limited," rescinded its contract celebrated with him for exploiting the Imataca mine. This assertion is denied by the authentic facts which were related whilst analyzing those alleged as the grounds for the former claim. In fact, it is evident that the above-mentioned syndicate did not rescind its contract on account of the reasons assigned, but that it dispatched the schooner *New Day* to Manoa with machinery and other articles necessary for making assays for the exploitation of the Imataca mine, but, as said ship was found to be discharging its cargo at a port not authorized for foreign trade, the corresponding lawsuit was brought against it, and the final sentence thereof declared that the ship and cargo, together with its tackle and appurtenances, had incurred the penalty of confiscation, all having been complied with in conformity with Venezuelan law. According to Turnbull himself, his affairs with said syndicate were rescinded owing to the referred-to calamity. If such calamity occurred through Turnbull's fault, he ought to take upon himself the injurious consequences thereof; if the same occurred through the syndicate's fault, it had no right to rescind the contract, and Turnbull could demand of it payment for damages and losses. In consequence thereof, the claim under analysis is deprived of all legal grounds.

There is another general feature common to all of Mr. Turnbull's claims, and that is the want of evidence in regard to the damages he pretends to have suffered, and which he reckons at really fabulous amounts. With regard to the detention of three of his ships during one month, effected by a Government official, he does not even mention his name, and affirms that as soon as the Government heard of this they replaced the said employee and put the ships at liberty, which means that the Government tendered their protection to Mr. Turnbull's interests. And as regards the stealing and destruction, effected in 1893, of the tools and machinery placed at the mines by the claimant, he himself declares that such injurious acts were committed "*by certain individuals who were revolting against the Governments,*" which shows that such acts were an infringement of common law, and that Turnbull should have applied to the courts of justice to denounce or report the perpetrators thereof and demand of them lawful civil atonement.

"THE ORINOCO COMPANY, LIMITED."

This company claims to be paid \$125,000 for damages alleged to have been caused through its having bought the Imataca mine, at a judicial sale before the court of hacienda at Ciudad Bolivar, and through the court of common pleas of the federal district having declared in a sentence issued on June 7, 1900, that the mine belonged to Turnbull.

When analyzing the claims of said Turnbull, we minutely stated everything relative to the confiscation suit brought against "The Orinoco Iron Syndicate, Limited," before the national court of hacienda at Ciudad Bolivar, and we fully showed the lawfulness of said tribunal's proceedings, for which reason we shall briefly demonstrate the entire want of grounds for this claim.

This want of grounds for the claim and its wrongfulness are evidenced in the memorial itself, which, on the other hand, shows besides the negligence and unskillfulness wherewith the company and its representatives carried on the whole affair. The fact is that in said memorial it is admitted that Mr. Benoni Lockwood, jr., took no care to ascertain, before becoming a purchaser, what rights were about to be sold, nor whether such rights actually belonged to the Orinoco Iron Syndicate, Limited, against whom said action was brought, and said gentleman thought, without reading the respective titles, that "said syndicate was assignee of all of the rights which had been claimed by said Turnbull to said premises; and being assured and advised by said Berrio, and supposing and believing that said sentence was a lien upon and that the purchaser of said premises, at said sale would therefore acquire all the rights of said Turnbull or said syndicate to the possession, development, or exploitation of said mine, and the title of 'The Orinoco Company, Limited,' thereto be effectually and finally quieted as against the same, etc.," he became a purchaser thereof. All of which evidently proves that Lockwood incurred in a series of deplorable mistakes, and "The Orinoco Company, Limited," holds the inconceivable absurdity that Venezuela must indemnify it for the injurious consequences thereof.

Mr. Baxter, the direct representative of "The Orinoco Company Limited," did not share in Mr. Lockwood's mistakes, as having powerful reasons to doubt that the Orinoco Iron Syndicate, Limited, was the owner of the mine, and in doubt also as to whether said sale were legal, he denied to deliver to Lockwood the 120,000 bolivars, which was the price of the sale, and did not effect said payment until much later, having done so in virtue of an agreement which the claimant says he made with Gen. Celis Plaza and General Berrio, etc. We repeat that, in the IV paragraph of the memorial, destined to expound and support this claim, its insubsistency is shown.

The high federal court in its last sentence pronounced the unlawfulness of the recourse to appeal against said sale, which Turnbull had pretended, and then said Turnbull brought an action against Benoni Lockwood, jr., and "The Orinoco Company, Limited," in which case a definite sentence was passed on June 7, 1900, its dispositive part being as follows, to wit:

For the above reasons the tribunal administering justice in the name of the Republic declares groundless the part of the action brought for injury and damages by George Turnbull against Benoni Lockwood, jr., American citizen, resident in New York, and the Orinoco Company, Limited, an American corporation organized in

conformity with the laws of the State of Wisconsin, as is shown by the power produced, and of effect the other part in which the said Turnbull asks that it be declared that the Orinoco Iron Company has no right of action against him and has no rights to enforce on his mine Imataca. No special order is made as to costs.

No claim arising from said sentence is just, except to prove that the same is notoriously unjust; furthermore, the Orinoco Company, Limited, was satisfied with said decision, since it did not attempt the recourse to appeal against it, which is granted under article 185 of the Code of Civil Procedure and which provides as follows, to wit:

On all definite sentences issued in first instance appeal is given, except when special disposition is made to the contrary.

And lastly, the real purchaser is Mr. Benoni Lockwood, jr., and not the Orinoco Company, Limited; whereas, if by said sale the company sustained damages whatever, it ought to claim compensation of the former, and not of the Government of Venezuela.

It is extremely surprising that the sale having been for 120,000 bolivars, the company should inconsiderately raise this claim to 125,000 dollars.

It has most clearly been shown that the claim analyzed entirely lacks grounds and therefore must be disallowed.

The second claim of "The Orinoco Company, Limited," is supposed to arise from the executive resolution issued on October 11, 1900, whereby the nullity and insubsistency of the Fitzgerald contract of September 22, 1883, was ratified.

The Orinoco Company, Limited, sets forth this claim as assignee and successor of the "Manoa Company, Limited," in regard to the Fitzgerald contract. From a judicial point of view the position of both companies is identical, and consequently the reasons which I exposed on analyzing said contract suffice for rejecting, as I absolutely do reject, this claim.

I therein proved that the resolution of September 9, 1886, is quite legal: First, because the "Manoa Company, Limited," confessed authentically the facts which are the grounds thereof; secondly, because the company itself acknowledged the forfeiture of the contract, and lastly, because it made of the Government a judge as to the subsistency of said contract, which, having been annulled, could not revive through a resolution, but was essentially necessary that it should be issued anew, fulfilling all the requisites and formalities wherewith it was originally issued.

REMARKS IN REFERENCE TO "THE MANOA COMPANY, LIMITED," AND
TO "THE ORINOCO COMPANY, LIMITED."

The Venezuelan commissioner can not accept the alternative and doubtful form in which the aforementioned companies set forth some of their claims.

"The Manoa Company, Limited," states that if by reason of the force and effect of said resolution of September 9, 1886, the Fitzgerald concession was annulled, the company estimates the damages sustained at a certain amount, but that if said resolution did not attain legal efficacy, then the compensation demanded amounts to a different sum. And in the same way it sets forth its claims for the Imataca and Pedernales mines.

"The Orinoco Company, Limited," adheres to the same alternative form in setting forth its claims regarding the contract and aforesaid mines.

Such a form is inadmissible according to the spirit and meaning of the protocol; in the first place, because every claimant must set forth his claims in categorical and not in doubtful terms, as the Commission entirely lacks jurisdiction to decide as to the validity or nullity of a contract and of titles of ownership, and because it has been organized to entertain claims of United States citizens for obtaining indemnification for damages and losses caused by acts of the Government, or of Government officials; wherefore, whenever this Commission examines the lawfulness or unlawfulness of a resolution of the Government from which a claim derives, it is with the sole view of awarding an indemnification in case of said resolution being unlawful, and of denying it if it is lawful; but this Commission entirely lacks jurisdiction for declaring a resolution inefficacious and making its effects void.

The Government of Venezuela, in organizing the Mixed Commissions, appointed judges, and not authorities capable of annulling its acts.

For the same powerful reasons, the undersigned does not admit the arguments of the honorable commissioner on the part of the United States, Mr. Bainbridge, especially those affirming the existence of the Fitzgerald contract and those denying validity to the titles of ownership of the Imataca and Pedernales mines issued by the Government of Venezuela.

In virtue of the reasons stated, the opinion of the Venezuelan commissioner is that the claims marked Nos. 45, 46, and 47 set forth by George Turnbull, "the Manoa Company, Limited," and "The Orinoco Company, Limited," respectively, must be absolutely disallowed.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George Turnbull, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 45.
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THE UNITED STATES OF AMERICA ON BEHALF of the Manoa Company, Limited, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 46.
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THE UNITED STATES OF AMERICA ON BEHALF of The Orinoco Company, Limited, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 47.
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OPINION, DECISIONS, AND AWARD BY THE UMPIRE.

The claim of George Turnbull is disallowed.

The claim of the Manoa Company, Limited, is disallowed.

The umpire awards to the Orinoco Company, Limited, the sum of \$26,620 United States gold.

APRIL 12, 1904.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George Turnbull, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 45.
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THE UNITED STATES OF AMERICA ON BEHALF of the Manoa Company, Limited, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 46.
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THE UNITED STATES OF AMERICA ON BEHALF of the Orinoco Company, Limited, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 47.
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The UMPIRE.

A difference of opinion arising about these three claims between the Commissioners of the United States of North America and the United States of Venezuela they have duly referred to the umpire, and as they all have the same origin, and follow the same order of facts the umpire thought it well to consider them jointly, and having fully taken into consideration the protocol and also the documents, evidence, and arguments, and likewise all the other communications made by the parties, and having impartially and carefully examined the same, has arrived at the decision embodied in the present award.

Whereas in the month of September, 1883, the Government of Venezuela entered into a contract with Cyrenius C. Fitzgerald for the exploitation of the natural products of a certain extent of territory, which contract reads as follows:

The minister of fomento of the United States of Venezuela, duly authorized by the President of the Republic, of the one part, and Cyrenius C. Fitzgerald, resident of the Federal Territory Yuruary, of the other part, have concluded the following contract:

ARTICLE I.

The Government of the Republic concedes to Fitzgerald, his associates, assigns, and successors, for the term of ninety-nine years, reckoning from the date of this contract, the exclusive right to develop the resources of those territories, being national property, which are hereinafter described.

(1) The island of Pedernales, situated to the south of the Gulf of Paria, and formed by the Gulf and the Pedernales and Cucuina streams.

(2) The territory from the mouth of the Aragua, the shore of the Atlantic Ocean, the waters above the Greater Aragua, to where it is joined by the Araguaito stream, from this point, following the Araguaito to the Orinoco, and thence the waters of the upper Orinoco, surrounding the island of Tortola, which will form part of the territory conceded, to the junction of the José stream with the Piacoa; from this point following the waters of the José stream to its source; thence in a straight line to the summit of the Imataca range; from this summit following the sinuosities and more elevated summits of the ridge of Imataca to the limit of British Guayana, from this limit and along it toward the north to the shore of the Atlantic Ocean, to the mouth of the Aragua, including the island of this name, and the others intermediate or situated in the delta of the Orinoco, and in contiguity with the shore of the said ocean. Moreover, and for an equal term, the exclusive right of establishing a colony for the purpose of developing the resources already known to exist and those not yet developed of the same region, including asphalt and coal;

for the purpose of establishing and cultivating on as high a scale as possible agriculture, breeding of cattle, and all other industries and manufactures which may be considered suitable, setting up for the purpose machinery for working the raw material, exploiting and developing to the utmost the resources of the colony.

ARTICLE II.

The Government of the Republic grant to the contractor, his associates, assigns, and successors, for the term expressed in the preceding article, the right of introduction of houses of iron or wood, with all their accessories, and of tools and of other utensils, chemical ingredients and productions which the necessities of the colony may require; the use of machinery, the cultivation of industries, and the organization and development of those undertakings which may be formed, either by individuals or by companies, which are necessary to or depending directly on the contractor or colonization company; the exportation of all the products, natural and industrial, of the colony; free navigation, exempt from all national or local taxes, of rivers, streams, lakes, and lagoons comprised in the concession, or which are naturally connected with it. Moreover the right of navigating the Orinoco, its tributaries and streams, in sailing vessels or steamships, for the transportation of seeds to the colony for the purpose of agriculture, and cattle and other animals for the purpose of food and of development of breeding; and, lastly, free traffic of the Orinoco, its streams and tributaries, for the vessels of the colony entering it and proceeding from abroad, and for those vessels which, either in ballast or laden, may cruise from one point of the colony to the other.

ARTICLE III.

The Government of the Republic will establish two ports of entry, at such points of the colony as may be judged suitable, in conformity with the treasury code.

The vessels which touch at these ports, carrying merchandise for importation, and which, according to this contract and the laws of the Republic, is exempt from duties, can convey such merchandise to those points of the colony to which it is destined and load and unload according to the formalities of the law.

ARTICLE IV.

A title in conformity with the law shall be granted to the contractor for every mine which may be discovered in the colony.

ARTICLE V.

Cyrenius C. Fitzgerald, his associates, assigns, or successors are bound:

(1) To commence the work of colonization within six months, counting from the date when this contract is approved by the Federal council in conformity with the law.

(2) To respect all private properties comprehended within the boundaries of the concession.

(3) To place no obstacle of any nature on the navigation of the rivers, streams, lakes, and lagoons, which shall be free to all.

(4) To pay 50,000 bolivars in coin for every 40,000 kilograms of serrapia and caucho which may be gathered or exported from the colony.

(5) To establish a system of immigration which shall be increased in proportion to the growth of the industries.

(6) To promote the bringing within the law and civilization of the savage tribes which may wander within the territories conceded.

(7) To open out and establish such ways of communication as may be necessary.

(8) To arrange that the company of colonization shall formulate its statutes and establish its management in conformity with the laws of Venezuela, and submit the same to the approbation of the Federal Executive, which shall promulgate them.

ARTICLE VI.

The other industrial productions on which the law may impose transit duties shall pay those in the form duly prescribed.

ARTICLE VII.

The natural and industrial productions of the colony, distinct from those expressed in Article V, and which are burdened at the present time with other contracts, shall pay those duties which the most favored of those contracts may state.

ARTICLE VIII.

The Government of the Republic will organize the political, administrative, and judicial system of the colony, also such armed body of police as the contractor or company shall judge to be indispensable for the maintenance of the public order. The expense of the body of police to be borne by the contractor.

ARTICLE IX.

The Government of the Republic, for the term of twenty years, counting from the date of this contract, exempts the citizens of the colony from military service and from payment of imposts or taxes, local or national, on those industries which they may engage in.

ARTICLE X.

The Government of the Republic, if in its judgment it shall be necessary, shall grant to the contractor, his associates, assigns, or successors, a further extension of six months for commencing the works of colonization.

ARTICLE XI.

Any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the Republic, and by the competent tribunals of the Republic.

Executed in duplicate, of one tenor and to the same effect, in Caracas, 22d September, 1883.

Señor Heriberto Gordon signs this as attorney of Señor Cyrenius C. Fitzgerald, according to the power of attorney, a certified copy of which is annexed to this document.

[Seal of the ministry
of fomento.]

M. CARABAÑO,
Minister of Fomento.
HERIBERTO GORDON.

And whereas the term fixed in Article V, 1, of this contract on the petition of Fitzgerald was extended to six months more, to count from the 22d of March, 1884;

And whereas during this term, v. g., on the 14th of June, 1884, this concession was transferred from Fitzgerald to, The Manoa Company, Limited;

And whereas on the 9th of September, 1886, a resolution of the Federal Executive declared this contract insubsistente ó caduco ;

And whereas on the 28th of April, 1887, the Congress approved a contract passed in Nice on the 1st of January, 1886, between Guzmán Blanco, envoy extraordinary and plenipotentiary minister of the United States of Venezuela to various courts of Europe, and George Turnbull, which contract reads verbally as the above-mentioned contract with Fitzgerald, except that an Article XII was added, reading as follows:

This contract shall enter into vigor in case of the becoming void through failure of compliance within the term fixed for this purpose of the contract celebrated with Mr. Cyrenius C. Fitzgerald, the 22d of September, 1883, for the exploitation of the same territory.

And whereas on these contracts, respectively, are based the claims of The Manoa Company, Limited, all the claims but one of The Orinoco Company, Limited, and the claims of George Turnbull, it has to be considered which rights to claim for damages against the Venezuelan Government these contracts give to the claimants—The Manoa Company, Limited, The Orinoco Company, Limited, and George

Turnbull—and which obligations on the side of the Venezuelan Government to grant to the said claimants what they claim for can be based upon these contracts.

First as to the Fitzgerald contract, purchased by The Manoa Company, Limited, as being prior in date.

Whereas this contract in due form was lawfully performed, all its stipulations, of course, were binding upon both contracting parties as long as the contract legally existed.

Now, whereas claimants' claims center in the assertion that this contract was unlawfully annulled by the Venezuelan Government, and while it is for losses suffered in consequence of this unlawful annulment that damages are claimed, it has to be examined whether the contract was unlawfully annulled, and if so, whether this unlawful action gives a right to the claimant to claim for damages and imposes a duty on the Venezuelan Government to grant what is claimed.

Now, whereas the incriminated act of the Venezuelan Government is the resolution of the Federal Executive of September 9, 1886, this resolution has to be considered. It reads as follows:

El Señor Heriberto Gordón, con poder del Señor C. C. Fitzgerald, celebró el 22 de setiembre de 1883 con el Gobierno Nacional un contrato para explotar las riquezas que se encuentran en terrenos de propiedad nacional en el Gran Delta, debiendo empezar los trabajos dentro de seis meses, contados desde la fecha expresada, y aunque transcurrido este término sin dar principio á ellos, el Gobierno lo concedió una prórroga para verificarlos; como el indicado contratista no ha cumplido las obligaciones que contrajo, según se expresa en el informe del Director de Riqueza Territorial especificados en el mismo, refiriéndose al artículo 5 del contrato en que se determinen; el Consejero Encargado de la Presidencia de la República, con el voto afirmativo del Consejo Federal, declara insubsistente ó caduco el expresado contrato.

Cumuníquese y publíquese.

Por el Ejecutivo Federal.

Firmado.

G. PAZ SANDOVAL.

Reading this resolution it is clear that the contract was declared insubsistente ó caduco, for reason that the contracting party (claimant) had not done what in Article V of the contract he pledged himself to do.

Now, whereas this Article V reads as stated above, and whereas it is quite clear by evidence, not only that the claimant on the said 9th of September, 1886, had not complied with one of his obligations; whereas even at the end of the prolongation of six months that was granted as a term to begin the works of colonization this colonization can not be said to have begun, as the sending of an engineer and some employees on the 24th of August can not be said to be "commencing the works of colonization" (even if the then governor of the Federal Territory of the Delta on the petition of claimant's administrator stating the arrival of these employees added the words "so complying with the stipulation of Article V," because this authority could only state the facts, and was not the legal authority to judge whether by these facts claimant complied with the stipulation of the contract); whereas further on the original contractor himself, director of the claimant company, stated even as late as September, 1885, that claimant had not commenced the works of colonization; that claimant had not established a system of colonization; that claimant had not promoted the bringing within law and civilization the savage tribes which might wander within the territory conceded; that claimant had not opened up and established any ways of communication, and that claimant

had not even arranged that the company of colonization should formulate its statutes;

And whereas the claimant company itself, as late as April 10, 1886, stated in a petition to the Government of Venezuela that it had not realized the works it was pledged to realize by the contract; but that by the same evidence is shown that the claimant company, through its pecuniary position, *could not* have realized what by contract it was pledged to do, as according to the company's president himself, the company from October, 1885, till November, 1886, never had in cash more than \$6, and in that time did not spend a farthing for the execution of the contract, while during all that time the drafts drawn by the company's Venezuelan attorney, Mr. Heriberto Gordon, were protested as they could not be paid, with the exception of two for \$400 each, which were paid by Mr. Safford and not by the company's cash;

And whereas evidence shows that in January, 1885, stockholders resolved for the execution of the contract to issue \$5,000,000 in bonds, which in November of that year were secured by mortgage on the concession, and for which even until November, 1886, not a penny was received by the company, that even the printing of the bonds could not be paid, and that Fitzgerald, who had sold the concession for 44,750 shares of \$100 nominal each, in July 1886, was willing to sell them for a few thousand dollars. The facts alleged as a reason for declaring the contracts *insubsistente ó caduco* are proved, and it is clearly shown by evidence that on the 9th of September, 1886, the claimant company had in no wise fulfilled any of the duties imposed by the contract.

Now, whereas it is settled that there were sufficient reasons to declare the contract *insubsistente ó caduco* it has to be seen if by the declaration of the Federal Executive the contract really was annulled. And then it has to be remembered that the question could be and really has been put whether No. 1 of Article V of the contract was a condition, the nonfulfillment of which would retroact, so that it were as if the contract had never existed, in which case the resolution would be a simple act whereby it was stated that the contract did not exist, that it was *insubsistente*, and the contract would really not exist, or whether this No. 1, as all the other numbers of Article V, was an obligation, the nonfulfillment of which would be a sufficient reason for making the contract *caduco*—that is to say, to annul the contract that was till then really existing, which annulment, according to the general principles of equity, accepted by the laws of almost all the civilized nations, could not be executed by one of the parties, but had to be pronounced by the proper judge.

Now, whereas Article V expressly says that the concessionary, his associates, assigns, and successors *se obligan* (pledge themselves) to begin within a certain time, and whereas they could not begin without a concession, because they would have had no right to work according to the concession on the Government grounds granted by the concession, if they had not this concession; and whereas they could not have this concession not existing the contract by which it was granted, it seems evident that according to the will of contracting parties (the supreme law in this matter) this No. 1 of Article V, as in all other numbers of this article, was an obligation and not a condition.

Wherefore the mentioned Executive decree can not be regarded as a mere declaration that the contract was insubsistente, but has to be regarded as an act by which the Government declared it caduco, that is to say, "annulled it," which act could never have the effect of really annulling the contract, because in cases of bilateral contracts, the nonfulfillment of the pledged obligations by one party does not annul the contract ipso facto, but forms a reason for annulment, which annulment must be asked to the tribunals, and the proper tribunal alone has the power to annul such a contract; this rule of the law of almost all civilized nations being in absolute concordance with the law of equity, that nobody can be judge in his own case.

This annulment is superfluous, of course, when both parties agree that the contract is annulled because the obligations were not fulfilled, and the Executive decree in question can not be regarded as anything more but a communication on the part of the Government that it thought the contract was ended, to which the other party could agree or not agree as it thought fit, and if it did not think this fit the contract would subsist until its annulment was pronounced by the proper tribunal.

In consequence of all the before said we stand here before the case of a contract between two parties of which one, disregarding all the pledged obligations, gave more than sufficient reason for the annulment of the contract, while the other acted as if the contract were annulled by its own declaration of that annulment, in that way disregarding (as if not existing any longer) an always still lawful existing contract.

Now it might be asked, if absolute equity, without regard to technical questions, would allow to one of the parties the right to a claim based on a contract, the existence of which is, it is true, unjustly denied by the opposing party, but all the stipulations of which contract were trespassed by that same demanding party.

But there is more to consider.

It is not to be forgotten that the contract in question has an article 11 reading as follows:

The questions or controversies that arise for reason of this contract shall be decided in conformity with the laws of the Republic and by its competent tribunals.

Which article forms part of the contract just as well as any of the other articles, and which article has to be regarded just as well as any of the other articles as the declarations of the will of contracting parties, which expressed will must be respected as the supreme law between parties, according to the immutable law of justice and equity. "Pacta servanda," without which law a contract would have no more worth than a treaty, and civil law would—as international law—have no other sanction than the cunning of the most astute or the brutal force of the physically strongest.

It has to be examined, therefore, what parties intended by introducing this article in the contract? To what did they pledge themselves by submitting thereto? And in how far does it interfere with the claims herein examined?

Now whereas it is clear, that in the ordinary course of affairs, when nothing especially were stipulated thereupon, all questions and controversies arising for reason of the contract would have to be decided by the competent tribunals and in conformity with the laws, there must be

looked for some special reason to make this stipulation and to induce parties to pledge themselves expressly to a course of action they would without this special pledge be obliged to follow just as well. There must be a meaning in the article which makes the judges by law, judges by contract as well, and this meaning can be no other, but that parties agreed that the questions and controversies that might arise by reason of the contract should be decided only by the competent tribunals of the Republic, and therefore not by the judges of the country of the other party, if he be a foreigner, nor by arbitration, either national or international; while it is not to be overlooked that it is not said in the contract that *the claims* of one party against the other should be judged (that is to say, allowed or disallowed) by the mentioned judge only, but that only these judges should decide about the *questions and controversies* that might arise, which decision, of course, implies the decision about the question whether the interpretation of the contract by one of the parties, or that party's appreciation of facts in relation to the contract were right and therefore could be a good reason for a claim for damages, so that properly speaking, there could be no basis for a claim for damages, but the decision of these expressly indicated judges about this question or controversy.

Therefore, if one of the parties claims for damages sustained for reason of breach of contract on the part of the other party, these damages can, according to the contract itself, only be declared due in case the expressly designed judges had decided that the fact, which according to the demanding party constituted such a breach of contract, really constituted such a breach, and therefore formed a good basis whereon to build a claim for damages. Parties have deliberately contracted themselves out of any interpretation of the contract and out of any judgment about the ground for damages for reason of the contract, except by the judges designed by the contract, and where there is no decision of these judges that the alleged reasons for a claim for damages really exist as such, parties according to the contract itself have no right to these damages, and a claim for damages which parties have no right to claim can not be accepted. Parties expressly expressed will and their formal pledge that for reason of the contract no damages should be regarded as due but those declared due by the indicated judges, must be respected by this Commission, when judging about a claim based on such a contract, just as well as all the other stipulations of that contract, and therefore it can not declare due damages that parties in that contract solemnly themselves declared not to be due.

And whereas all the claims of the Manoa Company, Limited, as well as all the claims but one of the Orinoco Company, Limited, are claims for damages based on points that are questions and controversies arisen for reason of the Fitzgerald contract;

And whereas not one decision of the competent tribunals of Venezuela about these questions and controversies that would make these damages due was laid before the Commission, while, according to the contract itself, only such damages should be due between parties which were asked on such grounds as would have been declared good grounds by these tribunals, the Commission can not declare due the damages claimed which the parties by contract declared not to be due, and therefore it can not allow these claims.

Now, as to the claims of George Turnbull;

Whereas, as was shown above, on the 1st of January, 1886, on the 11th of September, 1886, and on the 27th of April, 1887, the Fitzgerald contract was as yet legally existing, the Republic of Venezuela could not dispose on behalf of Turnbull of what it already had disposed on behalf of another, and therefore Turnbull obtained no right whatever of property in the concession under and by virtue of the contract confirmed by Congress on the 27th of April, 1887;

And whereas the mines of Pedernales and Imataca formed part of the still existing Fitzgerald concession, Turnbull's alleged titles to these mines are equally void, and as all his claims are based on this void contract and these void titles, they can not be allowed.

Lastly, as to the claim of "The Orinoco Company, Limited," that is not based on the Fitzgerald concession.

Whereas evidence shows that on the 19th of November, 1898, Carlos Hammer, with power of attorney from Benoni Lockwood, jr., in the name of and representing "The Orinoco Company, Limited," paid to the Venezuelan Government the sum of 120,000 bolivars for rights purchased on a judicial sale on November 18, 1898, which rights, as evidence shows, the Republic could not dispose of, and out of the possession of which rights claimant was expelled by the proper authorities of that Republic. This unduly received sum of 120,000 bolivars has to be restored to him who unduly paid it.

Wherefore the Republic of the United States of Venezuela shall have to pay to "The Orinoco Company, Limited," the sum of 120,000 bolivars, or \$23,076.93, with interest at 3 per cent per annum from the 19th of November, 1898, to the 31st of December, 1903.

The United States and Venezuelan Claims Commission. Sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of George Turnbull, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 45.
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DECISION.

The above-entitled claim is hereby disallowed.

HARRY BARGE, *Umpire*.

Attest:

EDUARDO CALCAÑO SANAORIA,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered April 12. 1904.

The United States and Venezuelan Claims Commission. Sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the Manoa Company, Limited, claimant, v. THE REPUBLIC OF VENEZUELA.	} No. 46.
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DECISION.

The above-entitled claim is hereby disallowed.

HARRY BARGE, *Umpire*.

Attest:

EDUARDO CALCAÑO SANAORIA,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered April 12, 1904.

The United States and Venezuelan Claims Commission. Sitting at
Caracas, Venezuela.

AWARD.

In re the claim of the United States of America on behalf of the Orinoco Company, Limited, claimant, against the Republic of Venezuela, No. 47, the sum of twenty-six thousand six hundred and twenty dollars (\$26,620.00), in United States gold, is hereby awarded in favor of said claimants, which sum shall be paid by the Government of Venezuela to the Government of the United States of America in accordance with the provisions of the convention under which this award is made.

HARRY BARGE, *Umpire*.

Attest:

EDUARDO CALCAÑO SANAORIA,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered April 12, 1904.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of William H. Mundy, claimant, v. THE REPUBLIC OF VENEZUELA.	} No. 48.
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This claim was presented to the Commission on the memorial of the claimant, and was supported at the time of presentation by the agent of the United States in an oral argument. A brief was filed by the

agent of Venezuela in answer, and a brief was filed by the agent of the United States in replication.

[Translation.]

WILLIAM H. MUNDY }
v. } No. 48.
VENEZUELA. }

ANSWER.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of Venezuela, has studied the claim presented by William H. Mundy, an American citizen, and respectfully informs this tribunal:

This claim arises, according to the affirmation of the claimant, from certain professional services rendered to Venezuela by him before the Committee of Foreign Relations of the United States Congress with the object of obtaining the annulment of the judgments pronounced by the commissions of 1867-68, which had been attacked by the former because of fraud. The claimant does not recite what sort of services his were, nor by means of whom Venezuela agreed to pay him for them; but he does allege the existence of an agreement in which this latter recognized itself as a debtor to him and to John C. Nobles in the sum of \$50,000.

In the memorial of the claimant there will be observed a certain vagueness of expression which clearly demonstrates the injustice of the claim. In the first place a commission is referred to which sat "sometime before the year 1876." It is not conceivable how an individual who, according to his own statement, took such an active part in the work of securing the invalidation of the awards of that same commission to which, no doubt, he refers; does not know the exact date when it was in session, and indicates it approximately within the period of ten years.

Besides this most singular case is presented, that for the space of twenty years he has kept absolute silence without presenting his claim or asserting his rights before any one to whom they might appeal, and it is only now and before this tribunal that he appears attempting to justify his inaction by an inadmissible pretext and assumes that he will be believed upon his simple affirmation, since the document which supports his claim against Venezuela has been lost by him. According to the best criterion the contrary conviction would arise from that which he is attempting to establish.

Generally this sort of documents is not apt to be lost, but when this does happen all the necessary steps to secure the rights which are established by them are taken.

Venezuela has no notice that her confidential agent in Washington contracted in her name agreements of any sort, and in her department of foreign affairs there is nothing about the matter.

The claim ought to be disallowed because it is not founded upon any proof which makes the existence of the contract out of which it arises even plausible.

Caracas, August 5, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of William H. Mundy, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 48.
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REPLICATION ON BEHALF OF THE UNITED STATES.

The United States has presented in this case the claim of William H. Mundy amounting to the sum of \$10,000 for professional services rendered to the Government of Venezuela in the preparation of the case before the United States Government for setting aside the findings of the mixed commission which sat at Caracas in 1867 and 1868. The amount of the claim is based upon a written agreement entered into by the claimant with General Pile, the confidential agent of Venezuela. The claimant has not presented the original document upon which his claim is founded, owing to the fact that he has been prostrated by a serious illness which has rendered him incapable of transacting any business during the last fifteen years, and that in that time his papers have been scattered and lost. The claimant states in his memorial that after the rehearing commission of 1890 had been appointed, he applied to the minister of Venezuela to the United States for the payment of the amount due him, but that he obtained no satisfaction.

There has been no evidence other than the sworn memorial presented to the Commission in support of this claim, but the claimant has written to the agent of the United States stating that if necessary he will personally appear before the Commission to testify in this matter, although it will cause him heavy expense and much personal inconvenience. If the Commission does not feel that the claim is sufficiently supported by the memorial, it is respectfully suggested that it direct either that the claimant shall appear in person to further support his claim or that a commission shall issue to take his testimony.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of William H. Mundy, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 48.
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DECISION.

By the COMMISSION:

The Commission disallows the claim.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

DECISION:

In re the claim of the United States of America on behalf of William H. Mundy against the Republic of Venezuela, No. 48. The evidence presented in support of said claim being insufficient to establish any liability on the part of the Government of Venezuela to the claimant, the said claim is hereby disallowed.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

J. PADRON-UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered October 16, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the American Electric and Manufacturing Company, claimant,	} No. 49.
v.	
THE REPUBLIC OF VENEZUELA.	

This claim was presented to the Commission on the memorial of the claimant and was supported at the time of presentation by the agent of the United States in an oral argument. A brief was filed by the agent of Venezuela in answer and a brief was filed by the agent of the United States in replication.

On October 31 the Commissioner on the part of Venezuela rendered an opinion disallowing the claim. The Commissioner on the part of the United States verbally stated his inability to agree with the opinion of the Commissioner on the part of Venezuela, and the claim was submitted to the umpire for decision.

[Translation.]

THE AMERICAN ELECTRIC AND MANUFACTURING Company	} No. 49.
v.	
THE REPUBLIC OF VENEZUELA.	

ANSWER.

Honorable members of the American-Venezuelan Mixed Commission:

The undersigned, agent of the Government of Venezuela, has studied the claim presented by "The American Electric and Manufacturing Company," and respectfully shows to this tribunal:

I.

The company claimant is cessionary of a concession which the National Government granted in the year 1887 to Aquilino Orta, for the installation of telephonic lines in the Republic, approved by Congress, and afterwards transferred by Orta to Candalarío Padron; by this latter to the American Telephone Company; by it to the American Telephone Company (Consolidated); and lastly by said company to the claimant. The origin of the claim consists, according to the affirmation of the claimant, in that the Government violated the stipulations of the contract made with Orta, by granting to another company franchises analogous to those which constituted his privilege. It asserts also that it acquired the said concession with the positive assurance and in the belief that the Venezuelan Government had granted it exclusive rights.

The grounds upon which the claimant relies are not conclusive for the following reasons:

(1) Because at the date of the Orta concession there existed in full force a contract made with Mr. J. A. Derrom, as representative of the Intercontinental Telephone Company of New Jersey, articles 1 and 3 of which are as follows:

ART. 1. The Intercontinental Telephone Company obligates itself to establish telephonic lines within the cities and between the principal cities and towns of the Republic as they may be deemed necessary.

ART. 3. The Government obligates itself not to grant during the period of fifteen years, reckoned from this date, a like concession to any other person or company.

(2) Because, under date of the 29th of August, 1888, Mr. T. W. Tyrer, superintendent of the American Telephone Company (Consolidated), the immediate predecessor of the claimant, went before the ministry of fomento, soliciting the revocation of the concession which the Intercontinental Company was enjoying, which proves that at that date a controversy had arisen between the two companies.

II.

There can be no doubt that the rights ceded to Aquilino Orta by the Government were thus ceded without prejudice to those which Mr. Derrom had acquired prior to that time by the contract to which reference has been made. It is not possible for the claimant to plead ignorance at the time when it succeeded to the concession of Orta in said contract, which was a law of the Republic. The assertion that it promised to annul it for want of fulfillment is unfounded in the first place, and, besides, such promise, in case it were made, which is denied, could afford no security, since the annulment of said contract had to be declared by an adverse judgment between the contracting parties, as is stipulated in the instrument constituting it. Thus it is, then, that when the predecessors in interest of the claimant began to fulfill its contract they did so knowing of the existence of the other concession prior and similar to their own, which was in existence.

The competition between the two companies resulted in the liquidation of the claimant, which neither at that time nor afterwards made any claim against the Government before the tribunals of justice, nor diplomatically. It is undoubted that if it considered that it had any rights it ought to have enforced them, in accordance with the Venezuelan laws to which it had submitted itself expressly by the tenth clause of the contract.

It is to be noted that in the contract made with Orta the Government did not grant him the exclusive right to install telephone lines in the interior of the Republic; that since then it has not granted any new concession nor permitted extensions of the contracts already in force.

The same clause 8 of the Orta contract, which literally reads, "the Government shall not grant to any other person or company like concessions, nor shall it permit extensions of the contracts which may be in opposition to the present * * *," shows clearly that it considered some analogous contract in force that could have been extended; this could not be other than the Derrom contract, relating also to telephonic installations, but on a smaller scale.

The American Electric and Manufacturing Company, as has been shown, not having taken measures against the Government before the national tribunals, nor diplomatically, for any claim on account of the nonfulfillment of the contract of which it was the cessionary up to the time when it sold its properties, of which sale it notified the competent authorities without reserving any right, it can not be admitted to claim before this honorable Commission for imaginary damages which, at any rate, it ought to have attempted to recover by suit before the judges chosen by itself with its cocontractor.

For all of the foregoing reasons the claim ought to be disallowed.

Caracas, August 16, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the American Electric and Manufacturing Company, claimant,	} No. 49.
v.	
THE REPUBLIC OF VENEZUELA.	

REPLICATION ON BEHALF OF THE UNITED STATES.

STATEMENT OF FACT.

This claim is made on behalf of the American Electric and Manufacturing Company, a corporation organized and existing under and by virtue of the laws of the State of Virginia, and a citizen of the United States of America. On April 20, 1887, the Government of Venezuela, acting through its duly authorized representative, entered into a contract with Aquilino Orta for the construction, maintenance, and operation of telephone lines in the Republic of Venezuela. Subsequently Orta assigned this contract to one Candelario Padron, who, in turn, transferred the same to the American Telephone Company, which granted all its rights under said concession to the American Telephone Company, Consolidated, which, in turn, ceded its rights to the present claimant.

Prior to the granting of the contract to Aquilino Orta the Government of Venezuela had made a similar contract, which had been ceded to the Intercontinental Telephone Company. The Intercontinental Telephone Company had, at the time of the concession of the Orta con-

tract to the predecessor in interest of the claimant here, a telephone plant in operation in the city of Caracas.

At the time that the American Telephone Company took over the Orta concession the authorities of the Venezuelan Government gave them the assurance that as soon as their plant was in operation the concession of which the Intercontinental Telephone Company was the owner would be revoked; that the reason therefor was that its service was poor; that it had refused to fulfill stipulations made with the Government as to the reduction of rates, and that, moreover, it had not fulfilled its contract, as it had not completed the construction of telephone lines throughout the Republic of Venezuela within three years from the date of the contract, as provided for in article 6. Upon this assurance, the American Telephone Company, as is shown by the memorial and the testimony introduced here in evidence, spent large sums of money in the establishment of its plant at Caracas and in other cities of Venezuela.

The predecessor in interest of the present claimant fulfilled all the stipulations of the contract with the Government of Venezuela, constructing its lines within the specified time and paying to the Government of Venezuela 6 per cent of the gross receipts of said company. The payment of this percentage is shown by documents existing in the department of mails and telegraphs (ministry of fomento) of Venezuela, entitled "Department of Telephones, General Memorandum concerning the American Telephone Company, 1887-1898."

As soon as the plant was properly in operation the duly authorized representative of the American Telephone Company appealed to the Government for the revocation of the contract under which the Intercontinental Telephone Company was operating. The Government of Venezuela failed to comply with its promise, and the two companies continued to operate their separate plants. Subsequent thereto the Intercontinental Telephone Company began the construction of new lines and the importation of materials and machinery for the construction thereof. This also was made the subject of written protest by T. W. Tyrer, the duly authorized representative of the American Telephone Company.

At the time of the granting of the Orta contract one J. J. Derrom, who was the representative of the Intercontinental Telephone Company, made a protest to the Government of Venezuela in which he stated that said contract was an infringement of the rights of the Intercontinental Company of New Jersey. This protest is on file in the ministry of fomento of the Venezuelan Government under the title of "Record No. 17, file No. 6, year 1887, Department of Mails and Telephones." The answer to this protest on the part of Mr. Derrom appears in the evidence submitted herewith.

The failure on the part of the Venezuelan Government to fulfill its promise with respect to the cancellation of the concession of the Intercontinental Telephone Company and its refusal to prevent said company from extending its lines then existing and building new lines, as well as the fact that it permitted materials and machinery for said lines to enter the Republic free of duty, caused a competition in the telephone business in Venezuela which ultimately forced the retirement of the American Electric and Manufacturing Company and the sale of all its property at a great sacrifice.

I.

From the evidence in this case it is apparent that the Government of Venezuela was dissatisfied with the telephone service rendered by the Intercontinental Telephone Company and that it had decided to annul the concession of that company and grant a new concession for the establishment of an efficient service. With this object in view it granted the new concession, which, by the transfers above stated, subsequently became the property of the claimant. The letters herewith submitted in evidence, addressed to the Government of Venezuela by the American Telephone Company, Consolidated, clearly show that the Government of Venezuela intended to take definite action to prevent further operations by the Intercontinental Telephone Company as soon as the new service was established. These letters are in the form of protests to the Venezuelan Government for not having carried out the promises upon which the company relied, and specifically refer to a verbal understanding had with the Government by the representative of the American Telephone Company, Consolidated. Upon this point the files of the proper department of the Government of Venezuela have been consulted to ascertain what correspondence was had upon this matter, and there does not appear to have been any reply to the protests of the new company. From this it is fair to presume that if the understanding as stated in the letters had not existed, the Government would have resented the protests and would have addressed itself in reply to the company, stating its position. It is reasonable to assume, therefore, that the understanding between the Government and the new telephone company was exactly as stated.

II.

Notwithstanding the verbal agreement on the part of the Government it continued to allow the Intercontinental Telephone Company to carry on its business, and besides permitted it to introduce free of customs duties instruments and materials for the construction of new telephone lines, thus actually fostering the old enterprise at the expense of the new company. This fact is clearly established by the letters of protest of the American Telephone Company, Consolidated, above referred to, and on this point there does not appear to have been any answer by the Government of Venezuela.

III.

From the evidence submitted with this claim it is apparent that the American Telephone Company, Consolidated, relying upon its contract, which gave it the sole right to establish a telephone service in Venezuela, and upon the good faith of the Venezuelan Government, interested a large amount of capital, which was put into the enterprise; that it constructed its plants and operated its lines; that it paid the percentage to the Government agreed upon; that its earnings were good; that it was living up to the spirit and letter of its contract, and that it was in a fair way to prove a permanent success. It is clear that the ultimate sacrifice was due to the nonfulfillment of the promises made to it and to the favor shown to the Intercontinental Telephone Company.

We submit, therefore, that an award should be made for the full amount of the loss occasioned to it by the conduct of the Venezuelan Government, as is claimed in the memorial.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of "The American Electric and Manufacturing Company,"	} Claim No. 49.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

Doctor GRISANTI, *Commissioner*:

"The American Electric and Manufacturing Company" deduces a claim against the Republic of Venezuela, adducing as the grounds for it the facts stated in its memorial, some of which—those denoting most importance—will presently appear in this statement.

In May, 1887, the Government of Venezuela made a contract, in virtue of which they granted Aquilino Orta "the right to establish telephonic communication within the towns and cities of the Republic and between the same; also in the country districts and country villages and between both; and further, to extend the same communication outside of Venezuela by such means as he may deem most suitable."

In July, 1883, the Government of Venezuela had signed another contract, which had the same object, with the "Intercontinental Telephone Company," of New Jersey, represented by Mr. J. A. Derrom.

After several assignments the claimant company became an assignee of the contract signed with Orta, and at the time of fulfilling the same by establishing some telephonic lines entered into competition with the "Intercontinental Telephone Company," of New Jersey, in which competition the claimant company was defeated and ended in its transferring the contract to its competitor.

This simple statement, strictly adhering to the truth, is an abridged record of the case. On what principle, then, of justice or equity can "The American Electric and Manufacturing Company" rely for its claim? From which juridical postulate or from which legal precept does liability arise for Venezuela to indemnify damages caused by the defeat in that struggle of enterprises considered the political economy as the most efficacious means of ameliorating and rendering products cheaper and developing industrial progress?

"The American Electric and Manufacturing Company" pretends to found its claim on the grounds of article 8 of its contract, which is worded as follows:

The Government shall not grant similar concessions to any other person or company, nor shall it permit additions to contracts interfering with the present one during a period of nine years, which shall be reckoned from the date on which it is signed, and may be extended for three years longer at the option of the Government.

The foregoing article was not infringed, as the Government of Venezuela did not grant any concession that impaired or collided with the right of the claimant company.

It is also adduced as the grounds for the claim that the Government authorities of Venezuela assured the claimant company that as soon as its telephonic plant should be in operation the concession of 1883 would be revoked.

Of this assertion, which is inverisimil, not the least proof has been produced; and in case such promise had been given, not being legal, it could not give rise to any right. On the other hand, the principal reason assigned for said revokement, which was the poor service of the "Intercontinental Telephone Company," of New Jersey, is denied by the real facts, as it defeated the claimant company in competition.

It is the opinion of the Venezuelan Commissioner that, on the strength of the reason stated, the claim specified, which "The American Electric and Manufacturing Company" deduced, should be disallowed.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of The American Electric and Manufacturing Company, claimant,	} Claim No. 49.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

DECISION.

Opinion by Doctor Barge, umpire.

The umpire disallows the claim.

NOVEMBER 18, 1903.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of The American Electric and Manufacturing Company, claimant,	} Claim No. 49.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

THE UMPIRE:

A difference of opinion having arisen between the Commissioners of the United States of America and the United States of Venezuela, this case was duly referred to the umpire.

The umpire having fully taken into consideration the protocol and also the documents, evidence, and arguments, and likewise all the communications made by the two parties, and having impartially and carefully examined the same, has arrived at the following decision:

Whereas the claimant in this claim was the proprietor of a contract made between the Government of Venezuela and one Aquilino Orta about the establishment of telephonic communication, and claims for damages suffered by him through the fault of the Venezuelan Government in his enterprise to realize the object of this contract; and

Whereas article 10 of this contract reads as follows: "Doubts and controversies that may arise in consequence of this contract shall be

settled by the courts of the Republic in conformity with its laws," the honorable agent for the United States of Venezuela opposes that before coming to this Commission the claimant company ought to have attempted to recover the pretended damages before the judges chosen by itself with its contractor.

Whereas, however, it is clearly shown by the evidence before the Commission that at the moment Aquilino Orta made said contract with the Venezuelan Government that Government was bound by a prior contract with another party, which contract, if not annulled, would make so much as void the contract with said Orta; wherefore, as is shown in the evidence, the claimant company and his predecessors did not cease to ask for the annulment of the prior contract, basing their demand on the pretended promise of the Government to annul that contract; and wherefore the honorable agent of the United States of America in his replication (which replication at the same time bears the character as a brief on behalf of the claimant) cites "the failure on the part of the Venezuelan Government to fulfill its promise with respect to this cancellation of the (prior) concession" as cause of claimant's losses for which damages are claimed.

Whereas, therefore, not the contract, but the pretended promise, from which the contract had to deduce its value, shows itself as cause of this claim, no article of the contract seems apt to interfere with the question of jurisdiction about a claim originated in the nonfulfillment of a promise by which only that contract would obtain its full force and proper value.

Wherefore the fact that the claimant company did not first go to judges chosen by itself in this contract does not disable it to come to this Commission for decision in a claim originated in pretended promises whereon the force of the contract depended.

And now, as to the main question:

Whereas article 1 of the contract made in 1887 with Aquilino Orta, afterwards transferred to the claimant, reads as follows: "The Government grants to Aquilino Orta the right to establish telephonic communication *within the towns and the cities of the Republic and between the same*; also *in the country districts and the country villages and between both*," etc., whilst article 1 of a contract made in 1883 between the same Government and one J. A. Derrom (law of 31 July, 1883) reads as follows: "The International Company of Telephone pledges itself to establish telephonic lines *in the interior of the cities and between the principal cities and communities of the Republic* where this may be deemed necessary," being followed by these words of article 3: "The Government pledges itself during the time of fifteen years, beginning from this date, not to give equal concession to any other person or company." It is clearly shown that the concession given to Aquilino Orta was in flagrant opposition with the rights granted to the Intercontinental Company, and that the contract with Orta could never obtain its main effect as long as this contract with Derrom existed; wherefore the cancellation or this annulment of this prior contract was the condition sine qua non for the contractors of the later contract to attain the main effect of their act; and

Whereas the evidence laid before the Commission shows that claimant and his predecessors were well aware of this fact, as they never ceased to appeal to the Government for the revocation of the contract under which the Intercontinental Telephone Company was operating,

whilst it may be regarded as very characteristic for the way the contract with Orta was looked upon by its possessors that the contract a few months after its origin being already transferred into the hands of the fourth possessor. This fourth possessor (the American Telephone Company, consolidated, from which the claimant afterwards purchased it) refused to pay it with \$100,000, but agreed, as the evidence says, "only to give in payment thereof \$1,250,000 in shares," thus valuing its own shares at the very outset of the enterprise at less than 8 per cent; and

Whereas, further on, the former legal attorney of the American Telephone Company, who transacted the purchase of the contract by that company (from which company the claimant company in turn purchased its rights), declared under oath, as the evidence shows, that "it was with the explicit understanding that the *Intercontinental Company* was to be entirely removed that the American Telephone Company undertook to establish the telephone business in that country (Venezuela)." By all these facts it is clearly shown that to the knowledge of the claimant company and its predecessors the contract with Orta was in flagrant opposition with the prior contract made with Derrom, but could not have its main effect without the annulment of this prior contract, which annulment the possessor of the Orta contract pretended and pretend was promised to them by the Venezuelan Government, and that therefore not the contract itself, but the nonfulfillment of the promise that had to give the contract its force, or, as the honorable agent of the United States puts it in his answer, "the failure on the part of the Venezuelan Government to fulfill its promise with respect to the cancellation of the *Intercontinental Telephone Company*," is to be regarded as the cause of this claim.

And whereas no direct proof of this promise is to be found in the evidence, but whereas the fact that the Government decided to make the Orta contract, in flagrant opposition with the prior Derrom contract, and the fact that the Government not having contested the different protests of the claimant company and its predecessors as to the nonfulfillment of this promise might seem to point to the probability of such promise having been (at least orally) given.

Whereas, on the other side, the facts:

First. That the Government never interrupted the acts of the *Intercontinental Telephone Company* when this company contrived to carry out the prior contract.

Second. That no proof of any sign of difficulties between the Government and the *Intercontinental Telephone Company* is given except the complaint of the company not reducing their tariffs.

Third. That the Government, on the contrary, always behaved in respect to the *Intercontinental Telephone Company* in a way which made the claimant company and its predecessors speak about the *Intercontinental* as about "the favored company," and complain of the Government's predilection for that company, and which even made the honorable agent of the United States of America point to "the favors shown to the *Intercontinental Telephone Company*" as to one of the reasons for the ultimate sacrifice of the undertaking of the claimant company and its predecessors, seem to speak for the improbability of the Venezuelan Government ever intending to cancel the prior contract in favor of the second; and, consequently, for the improbability of any formal promise as to that cancellation, for all which reasons

the fact that the Government of Venezuela promised to the claimant company and its predecessors the cancellation of the Derrom contract can not in equity be said to be sufficiently proved.

Whereas, further on, article 8 of the Derrom contract reads, in the same words as article 10 of the Orta contract, "Doubts and controversies that may arise in consequence to this contract shall be settled by the courts of the Republic in conformity with its laws;" and

Whereas, therefore, even if, as claimant assures, the Government wanted to finish up with the Derrom concession, and for that reason promised its cancellation, this promise would be a promise to do an illegal act, as the Government, as well as the other party, was bound to this article, and therefore to the laws of the country, which laws, in complete accord with general principles of law, would not allow the Government to cancel the contract on its own authority, but would require that the annulment be declared by an adverse judgment between the contracting parties; for which reason such a promise, even when proved to have been given, would not give rise to any rights as being illegal, and with relation to the contract (which without it would be void of its main value) would stand as a condition explicitly given orally and implicitly contained in the contract, which condition, according to the laws of the country as well as according to the general principles of law, would be null and make null the contract that depends on it.

Whereas, therefore, whatever may or might have been the wrong of the Government in making a contract in flagrant contradiction with a prior contract, or in promising to put an illegal deed, so that the later contract might have its force, absolute equity forbids to recognize a right to a claim founded either on the breach of a contract that could only get its force by the fulfillment of a promise to do an unlawful deed or on the nonfulfillment of this unlawful promise itself, the claim of the American Electric and Manufacturing Company has to be disallowed.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Lorenzo Mercado, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 50.
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This claim was presented to the Commission on the memorial of the claimant, and was supported at the time of presentation by the agent of the United States in an oral argument. A brief was filed by the agent of Venezuela in answer. Before the time for replication under the fourth rule of the Commission had expired, the agent of the United States was instructed by the legation of the United States at Caracas to withdraw the claim in accordance with the wishes of the claimant. The claim was accordingly withdrawn.

[Translation]

LORENZO MERCADO }
v. } No. 50.
VENEZUELA. }

ANSWER.*Honorable members of the Venezuelan-American Mixed Commission:*

The undersigned, agent of the Government of the United States of Venezuela, has studied the new claim presented by Lorenzo Mercado, and respectfully informs the tribunal:

In answering the present claim the agent of Venezuela ought to reiterate the argument made in the answer of claim No. 27, attempting to demonstrate that the claimant is not an American citizen, and in the case denied that the Commission might recognize him as such; he could not invoke the protection of the American Government on account of having mixed himself in the interior affairs of the politics of Venezuela, and violated, therefore, the neutrality which foreigners ought to observe.

Moreover, certain conditions exist, which the undersigned will now proceed to set forth, for the disallowance of the present claim.

It is based upon the following considerations:

(1) In facts arising out of the contract made for the construction of the wharves of Puerto Cabello.

(2) In damages suffered by the firm N. Paquet & Co., organized on the 1st of January, 1896.

(3) In the pretended violation of a contract relative to the construction of waterworks of El Valle made with the Government of Venezuela in the year 1897.

As may be seen from the memorial itself of the claimant, the rights which he alleges to hold against the Government of Venezuela all had origin on dates prior to the facts upon which he seeks to found his status as an American citizen.

On the other hand, the claimant has not furnished the proofs that he was in fact a member of the firm N. Paquet & Co., nor that he owned in it the interest which he claims.

Besides, the said firm was not registered as a juridic person in any American State, which prevents him from presenting himself before this honorable Commission.

With respect to the claim set up for the want of regularity in the payment of the interest upon the debt contracted by Venezuela as the price for the sale of the various concessions to which the claimant alludes, it is a principle of international law that such a circumstance can not give rise to international claims.

For the reasons set forth the undersigned considers that the claim ought to be disallowed.

Caracas, August 10, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Lorenzo Mercado, claimant, <i>v.</i> THE REPUBLIC OF VENEZUELA.	}	Nos. 27 and 50.
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YOUR HONORS: I am just in receipt of a letter from the legation of the United States in this city, stating that Mr. N. A. Paquet, the attorney in fact of Mr. Lorenzo Mercado, has withdrawn all claims which have been presented to this honorable Commission by the United States of America on behalf of Mr. Mercado, and instructing me to take formal action for their withdrawal. In consequence, I hereby formally withdraw claims Nos. 27 and 50 from the further consideration of the Commission.

Very respectfully,

ROBERT C. MORRIS,
Agent of the United States.

CARACAS, VENEZUELA, *August 15, 1903.*

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the heirs of Charles Raymond, claimants, <i>v.</i> THE REPUBLIC OF VENEZUELA.	}	No. 51.
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This claim was presented to the Commission on the memorial of the claimants, and was supported at the time of presentation by the agent of the United States in an oral argument. A brief was filed by the agent of Venezuela in answer and a brief was filed by the agent of the United States in replication.

[Translation.]

HEIRS OF CHARLES RAYMOND <i>v.</i> VENEZUELA.	}	Claim No. 51.
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ANSWER.

Honorable members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of Venezuela, has studied the claim presented by the heirs of Charles Raymond, an American citizen, and respectfully informs this tribunal:

I.

This claim arises out of a contract of charter party made by the Government of Venezuela in the year 1869 with Jean Ovide Preve-reaud de Sonnevile, who represented himself as the owner of the English

steamer *Irene*, the object of the contract. Said Sonnevile alleged that the Government had failed to perform the covenants agreed to, and after several extrajudicial representations before the political authorities he brought suit against the nation in the high federal court to enforce the contract and the payment for damages and injuries. The action after some time remained at a standstill from neglect chargeable to the claimant. Later the claimant attempted to introduce his claim before the Mixed Franco-Venezuelan Commission in his capacity of a French citizen; but the French representative in Venezuela disallowed it because he considered it an English claim, taking the stand, undoubtedly, that the true owner of the steamer *Irene* was an English subject. Not being satisfied with that decision, which, as is seen, decided the case irrevocably, the claimant sought the aid of the department of foreign relations of the French Republic, which threw out the demand anew because it was not in accord with the stipulations of the treaty of November 26, 1885, entered into by France and Venezuela. After this last failure the claimant did not again press the matter.

II.

The claim of the heirs of Raymond is founded on the fact that Sonnevile made to their predecessor in interest an assignment of properties, under date of the 29th of April, 1890, in which they consider included the right to claim against the Government of Venezuela for the reasons heretofore expressed, as will be seen from the mere inspection of the document of assignment amongst the properties which are specifically assigned, the right to this claim does not appear to be included, and it is not possible to presume for any good reason that it was the intention of the assignor to transfer it to his creditor, much less if it be considered that the estimated value of said properties which appears in that document amounted to a sum greater than that which was owed to Raymond by Sonnevile. When there is question of the alienation of rights, it is evident that the intention of parties ought to appear in an express and definite manner. The claim against Venezuela had been prosecuted a long while prior to the assignment, and if it was not included it was because it was thought to be extinguished by the former claimant, or because he wished to make it the object of a special reservation.

At all events, the claim on the part of the Raymond heirs is entirely without reason.

For the foregoing considerations the claim ought to be disallowed.
Caracas, August 8, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the heirs of Charles Raymond, claimants,	} No. 51.
v.	
THE REPUBLIC OF VENEZUELA.	

REPLICATION ON BEHALF OF THE UNITED STATES.

Without replying in detail to the answer of the honorable agent of the United States of Venezuela, we desire to submit the following observations with respect to the above-entitled claim:

The right of the heirs of Charles Raymond to claim before this tribunal depends entirely upon the right of Ovide de Sonnevile to proceed against the Government of Venezuela, and we shall, therefore, for the present, confine ourselves to stating what the rights of said De Sonnevile were.

In May, 1867, Charles M. Burns, of New Orleans, owed Ovide de Sonnevile the sum of \$35,000 American gold, and being unable to meet said obligation, gave him a mortgage or bottomry bond upon a steam vessel called the *Irene*. Together with this bond he delivered to De Sonnevile possession of said vessel and gave him a power of attorney to sell or make contracts for the affreightment or charter party of it. Shortly thereafter the vessel, while in the possession of De Sonnevile, collided with another steamer near the islands of Barbados and came to those islands in a disabled condition. In order to complete the repairs necessary to said vessel, Charles Raymond, a citizen of the United States, predecessor in interest of the present claimants, lent De Sonnevile the sum of \$2,500. With the repairs made in those islands the vessel was able to proceed to the island of Trinidad where, on September 12, 1869, De Sonnevile entered into a contract with the duly accredited representative of the Venezuelan Government for the charter of this steamship, the *Irene*, for a period of not less than sixty days, giving to said Government of Venezuela the right to prolong said period at its option and to purchase said vessel for the sum of \$30,000, money of the island of Trinidad. The contract also held the Government of Venezuela responsible for all damages to the vessel and obligated that Government to return the same in good repair to De Sonnevile.

On the 23d of November of the same year, or some days after the expiration of the period fixed in the contract as the shortest time that the charter of the vessel should endure, the Government of Venezuela notified De Sonnevile that it was ready to return it to him. Upon inspection De Sonnevile learned that the vessel was in bad repair and on the following day wrote the Government that the vessel must either be repaired or the cost of the repairs furnished, or the price of the vessel paid to him. Neither of these three alternatives was performed by the Venezuelan Government, and the vessel, after having been abandoned, was allowed to sink.

For several years De Sonnevile made claim before the various officials of the Venezuelan Government in the name of his constituent, Charles M. Burns, and later before the Venezuelan courts and the

Franco-Venezuelan Mixed Commission without success. During all this time De Sonnevile claimed in the name of his constituent, but in a letter to the secretary of foreign affairs of the French Republic, dated May 8, 1890, De Sonnevile stated that the steamship was his own property, but that, as the English law would not permit the registry of a ship under the English flag which was owned by a foreigner, he had resorted to having Mr. Burns made nominally the owner of the vessel and had taken from him the bottomry bond for the value thereof. There is no other information on this subject than the assertion of De Sonnevile, but whoever may have been the real owner of the steam vessel *Irene*, it conclusively appears from the documents submitted in evidence that De Sonnevile was at least interested in said vessel to the extent of \$35,000, and, as he agreed with the Venezuelan Government for the sale of said vessel for the price of \$30,000, it is reasonable to suppose that the property, if any, of Burns in said steamship, was insignificant.

A bottomry bond, which is a chattel mortgage of a ship, given as security for money loaned, has this peculiar characteristic, that the vessel upon which such bottomry is taken out is the sole security for the money loaned, and if it be lost the mortgagee loses all right of recovery against the mortgagor. Such was the position of De Sonnevile, unless he be considered the owner of the vessel, when he chartered it to the Venezuelan Government. As such mortgagee De Sonnevile was entitled to receive the first \$35,000 that should result either from the earnings or sale of said vessel. The Government of Venezuela entered into a solemn obligation with De Sonnevile to charter said vessel from him, and agreed to pay him therefor a rent of \$100 per day and in case of loss of the vessel to pay him the sum of \$30,000. Up to the time of his death the Venezuelan Government never paid De Sonnevile any money except the \$5,000 on account, acknowledged to have been received by him in the recitals of the contract.

As appears from the olographic will of De Sonnevile, made in 1878, and herewith submitted in evidence, it was his wish and desire that Raymond and his heirs should be reimbursed for the loan which Raymond had made him and which up to the time of his death he had never been able to return.

By this will De Sonnevile bequeathed to Raymond all his properties and his right to claim against the Government of Venezuela up to the amount of his debt, with interest from the date it was contracted, making other dispositions with respect to any residue that there might be over and above this amount in the following manner: \$5,000 to Florence Raymond, the godchild of De Sonnevile and one of the claimants herein, and anything over and above that to his brother and sister, then residing in France.

In 1890 De Sonnevile executed another instrument in the form of a general assignment to Raymond, therein reciting that he had no heirs. No doubt between the time of making his will in 1878 and the execution by him of the assignment in 1890 his brother and sister had died without issue.

The properties left by De Sonnevile consisted mainly of coffee groves. Upon these properties Raymond or his heirs have never been able to realize anything, as is shown by the affidavit of Mr. Ascanio Negretti, the attorney in fact of Raymond, which is herewith submitted

in evidence. These properties to-day are in a state of dilapidation and of no value.

Whether De Sonnevile was the owner of the steamship *Irene* or merely the mortgagee, there can be no question of the fact that he had a claim against the Government of Venezuela by virtue of the contract of September 12, 1869, and his lien upon said ship to the extent of \$35,000, United States gold, evidenced by the bottomry bond. This contract was made by the duly authorized representative of José Ruperto Monágas, the President of Venezuela, with De Sonnevile before the Venezuelan consul, Francisco A. Paúl, at Port of Spain. The Government of Venezuela has never challenged the validity of this contract, and indeed it has fully recognized it by the letter of Ignacio Salon to De Sonnevile, dated November 23, 1869. As has been stated above, the claimant endeavored by every means in his power to secure the payment due under this contract by the Government of Venezuela, but failed in every attempt. He then presented his claim to the representative of the French Government for submission to the French-Venezuelan Claims Commission, organized under the treaty of November 26, 1885; but the French representative, misunderstanding the nature and the origin of the claim, declined to submit it.

De Sonnevile then, in consideration of the debt contracted with Raymond and his friendship for him, executed the general assignment to him of all his present and future properties. This assignment was accepted by Mr. Ascanio Negretti, as representative of Raymond. In this assignment were specifically included certain coffee estates and their appurtenances. These estates, as stated above, were never realized upon and are at the present time practically valueless.

On June 15, 1893, De Sonnevile died, leaving no heirs. It then appeared that he had left the will above mentioned, by which, as we have seen, he provided for the payment of his debt to Raymond and for certain other residuary legacies. Interpreting the two documents referred to, it was evidently the intention of De Sonnevile that, if possible before his death, at any rate after, Raymond should be paid the full amount of the debt, together with interest; that the legacy provided for in the will should then be paid to his godchild, and that whatever property might then remain should belong to Raymond. Under this view of the assignment and the will it is evident that the heirs of Charles Raymond have a perfect right to the ownership of the claim of De Sonnevile against the Republic of Venezuela.

Interpreting the assignment separately, then, we may say that it conveyed all present and future properties, necessarily therefore including this claim. If this assignment were construed not to include the claim against Venezuela, then (save as the will created charges in favor of Charles Raymond and Florence Raymond) this claim would remain undisposed of, De Sonnevile, as appears from the assignment, being then without heirs. A construction leaving part of the testator's property without disposition should be avoided as a matter of legal principle.

As to the manner of interpreting the assignment and in support of the above view, we submit in evidence herewith the opinions of various eminent Venezuelan lawyers referred to in the record.

If the interpretation above insisted on be not correct, a contention we can not for a moment admit, even then under the will of De Sonnevile the heirs of Charles Raymond have a right to claim from the

Republic of Venezuela the sum of \$2,500 United States gold, with interest at the rate of 6 per cent (this being the legal rate of the province where the debt was contracted) from October 9, 1868; the right to claim for the payment of the legacy of \$5,000 gold to Florence Raymond, and also the right to claim for an allowance for attorney's fees and the expenses of administration.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Commission, sitting at Caracas,
Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the heirs of Charles Raymond, deceased, v. THE REPUBLIC OF VENEZUELA.	}	No. 51.
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DECISION.

Opinion by Bainbridge, Commissioner.
The Commission disallows the claim.
November 11, 1903.

United States and Venezuelan Claims Commission, sitting at Caracas,
Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of heirs of Charles Raymond, deceased, claimants, v. THE REPUBLIC OF VENEZUELA.	}	Claim No. 51.
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BAINBRIDGE, *Commissioner*:

It appears from the evidence that on May 1, 1867, one Charles M. Burns, a subject of Great Britain, being indebted to Ovide de Sonnevile, a French subject, in the sum of \$35,000, executed and delivered to the latter at New Orleans a mortgage or bottomry bond upon a certain steam vessel owned by Burns called the *Irene*. At the same time Burns gave De Sonnevile power of attorney to sell the vessel or to make contracts for the affreightment or charter party thereof, and to collect all sums that may be due said steamship.

De Sonnevile took possession of the vessel and made a voyage, first to Barbados, and thence to the island of Trinidad. Near Barbados the *Irene* collided with another steamer, and in order to pay for the repairs rendered necessary by the accident De Sonnevile, on October 9, 1868, borrowed from Charles Raymond, a citizen of the United States, the sum of \$2,500.

At Trinidad on September 12, 1869, De Sonnevile, as attorney in fact of Charles F. Burns, entered into a contract with one George Fitt, as representative of the Venezuelan Government, for the charter of the *Irene* for a period of not less than sixty days, at the stipulated rate of \$100 per day. The contract provided that the Government should be responsible for all expenses and risks of the steamer, and

that in case she were lost or suffer any very severe damage that might render her useless, then her value, fixed at \$30,000, should be paid to De Sonnevile. Fitt paid De Sonnevile the sum of \$5,000 at the time of the contract in order to free the vessel from obligations which caused her detention at Port of Spain, and this sum De Sonnevile agreed to credit upon the amount the ship might earn under the charter. The contract also stipulated that the *Irene*, "being of English nationality," could not be engaged in a naval combat or be used for any operations from which the law of nations prohibits a foreign vessel.

On November 20, 1869, the Government of Venezuela notified De Sonnevile that the charter having expired, he might take possession of the *Irene*, and that his account for the charter would be liquidated. De Sonnevile, however, refused to receive the steamer because of serious injury suffered by the vessel in one of her boilers on October 17 previous, and insisted that the Government of Venezuela either repair the injury or pay the price stipulated in the contract for the vessel. On November 27, 1869, De Sonnevile, "in the name and representation of Charles M. Burns, subject of Her Britannic Majesty," made a protest before the register at Puerto Cabello; and on December 1, 1869, "as attorney of Mr. Charles Burns, a subject of Her Britannic Majesty," he made protest before the British vice-consul at Puerto Cabello in regard to the action of the Venezuelan authorities and the injuries sustained by the steamer *Irene*, "the exclusive property of said Charles M. Burns."

On December 15, 1869, De Sonnevile addressed a communication to Venezuelan minister of war and navy, stating that he was obliged to leave the *Irene* in the possession of the Government until the contract was complied with, and considering it in the service of the Republic; but suggesting that a commission be appointed to examine it, and if found in the same state in which was delivered he would receive it back, and that if, on the contrary, the commission should find that repairs were needed they should be made at the cost of the Government.

De Sonnevile eventually abandoned the ship and for many years continued to urge his claim upon the Government. In 1873 he instituted proceedings in the high federal court, but the suit was subsequently withdrawn. All of his efforts to obtain an adjustment of his claim proved fruitless.

In 1878 De Sonnevile made a holographic will, in which he declared himself indebted to Charles Raymond in the sum of \$2,500, with interest, and desired that after his death his property should be used to satisfy said indebtedness, and particularly setting forth that if the other property left by him should not be sufficient for that purpose, the necessary sum should be appropriated out of any recovery made on his claim against Venezuela occasioned by the loss of the *Irene*. He left to Florence Raymond, daughter of Charles Raymond, the sum of \$5,000, and the surplus to his brother and sister in France.

In April, 1890, De Sonnevile executed an assignment to Raymond of all his "present and future properties" in order to pay the indebtedness due the latter. The assignment states that "the properties which I give him in payment are the following," enumerating some fourteen different pieces of property, but not including the claim against the Government of Venezuela. De Sonnevile died on June 15, 1893.

A claim is now presented here on behalf of the heirs of Charles Raymond, as follows:

Value of vessel, as stipulated in contract.....	\$30,000
127 days' hire of vessel from September 15, 1869, to January 20, 1870, when abandoned.....	12, 700
130 tons of coal, at \$12 per ton.....	1, 566
	<hr/> 44, 260
Credit payment on account, September 12, 1869	5, 000
	<hr/>
Balance due January 20, 1870.....	39, 260
Interest at 3 per cent from January 20, 1870.....	39, 260
	<hr/>
Total	78, 520

Notwithstanding the fact that De Sonnevillle made the contract with the representative of Venezuela for the charter of the *Irene* as attorney in fact of Charles M. Burns, and subsequently made his protests in the name and representation of Burns as the owner of the steamer, it is quite evident that Burns's interest in the boat was merely nominal. The debt of Burns to De Sonnevillle, secured by the bottomry bond, was \$35,000. The valuation placed upon the boat in the contract with Pitt was \$30,000. The obvious intention of the parties to the bond was to cancel Burns's obligation, and the explanation given of the transaction is that Burns's nominal ownership would entitle the *Irene* to fly the English flag, under which it was desired she should sail. De Sonnevillle was, at any rate, in lawful possession, duly empowered by Burns to make out of the sale or use of the vessel the amount of the debt; and the question at the base of De Sonnevillle's claim is his beneficial interest in the contract with the Government of Venezuela and the rights accruing to him from its breach. Apparently that interest did not exceed the amount which, under the bond and power given by Burns, he was entitled to receive from the use or sale of the vessel, leaving Burns no equitable interest whatever in any claim arising out of the contract.

De Sonnevillle was a French subject, and the Commission has no jurisdiction of his claim against Venezuela except in so far as by proper assignment or transfer it may have become the property of citizens of the United States. The contention made here on behalf of the claimants is that they are owners of De Sonnevillle's claim, either, first, as a whole under the assignment of 1890, or, second, under the will of 1878 of so much of the claim as the amount of De Sonnevillle's indebtedness to Raymond, with interest, and the amount of the bequest to Florence Raymond.

The assignment of April 29, 1890, recites the indebtedness due to Raymond, and states: "In order to pay that debt I hand over to him all my present and future properties, as I have no heirs," and that "the properties which I give him in payment are the following," enumerating fourteen different pieces of property.

These properties are represented in the assignment to be worth 25,000 bolivars, free from all encumbrances, annuity, or mortgage. It is alleged that frequent attempts were made after De Sonnevillle's death to realize on the properties specifically enumerated in the assignment, but without success, and that although at one time the said properties may have had some value, it consisted principally in

the coffee groves which have since become ruined, and that these properties are at present absolutely worthless.

Among the properties which De Sonnevillle "gave in payment" by the assignment, the claim against Venezuela does not appear. There is certainly no reason to infer that De Sonnevillle intended to include it, inasmuch as the estimated value of the property enumerated exceeded the amount of the debt. The general terms are controlled by the specific enumeration, which evidently expresses the definite intention of the assignor, and to which in construction the conveyance must be limited. *Expressio unius exclusio alterius*. The position that the Raymond heirs are owners of the De Sonnevillle claim as a whole under the assignment is clearly untenable.

The alleged holographic will of De Sonnevillle bears date November 16, 1878. Substantially it states that desiring as far as possible to repair the losses he has occasioned to his excellent friend, Mr. Charles Raymond, of New Orleans, by the want of punctuality on the part of the Republic of Venezuela toward himself, he declares himself indebted to Raymond or to his legitimate heirs in the sum of \$2,500, which Raymond had delivered to him at the English island of Barbados in October, 1868, to cover the expenses of repairs which had been occasioned by the collision of another steamer with his own; that if the debt should not be paid before his death he desired that his property should be used for its payment, and that the surplus should then become the property of his goddaughter, Florence Raymond; and that being a creditor of the Republic of Venezuela of a debt occasioned by the charter of a steamer, the said credit, after its recovery, he wished to be distributed as follows: If the properties left by him were not sufficient to pay the debt, with interest, of Charles Raymond, the necessary sum should be employed for that purpose out of the money, and to his goddaughter, Florence Raymond, the sum of \$5,000 should be paid, the surplus to go to his brother and sister in France.

Two witnesses certify to the foregoing instrument and that De Sonnevillle had declared to them that in case of his death he desired the disposition made therein to be put into effect by the French consular authorities.

There is no evidence presented that this instrument was ever legally proved as the last will and testament of De Sonnevillle, or that there has ever been an administration of his estate. A will must be proved before a title can be set up under it, and so far as the adequacy of its execution is concerned, the probate must be according to the law of the testator's last domicile. In the absence of such proof, the document in question must be held inoperative to pass any rights whatsoever. The probate jurisdiction of this Commission is believed to be extremely limited.

The evidence shows that in order to make the repairs rendered necessary by the collision of the *Irene* with another steamer near Barbados, De Sonnevillle borrowed from Raymond on October 9, 1863, the sum of \$2,500. The expenditure of this money in necessary repairs in a foreign port created a lien in Raymond's favor upon the vessel. The presumption of law is that when advances are made to the captain in a foreign port upon his request for the necessary repairs or supplies to enable his vessel to prosecute her voyage, or to pay harbor dues, or for pilotage, towage, or like services rendered to the vessel, they are

made upon the credit of the vessel as well as upon that of her owners. It is not necessary to the hypothecation that there should be any express pledge of the vessel or any stipulation that the credit should be given on her account. (*The Emily B. Snider v. Pritchard*, 17 Wall., 666; *Hazlehurst v. The Sulu*, 10 Wall., 192; *Merchants' Mn. Ins. Co. v. Baring*, 20 Wall., 159.)

"It is notorious," says Mr. Justice Story, in *The Ship Virgin*, 8 Pet., 203, "that in foreign countries, supplies and advances for repairs and necessary expenditures of the ship constitute, by the general maritime law, a valid lien on the ship."

In *Wilson v. Bell*, 20 Wall., 201, the Supreme Court of the United States say:

The ordering, by the master, of supplies and repairs, on the credit of the ship, is sufficient proof of such necessity, to support an implied hypothecation in favor of the material man or the lender of money who acts in good faith.

Under the foregoing principles of maritime law it is clear that Raymond held a lien upon the *Irene* for the advances made by him at De Sonnevile's request, and expended by the latter in the necessary repairs. Raymond's lien followed the ship when the Venezuelan Government took possession of her under the charter party of September 12, 1869.

It is the very and essence of a lien that, no matter into whose hands the property goes, it passes cum onere. (*Burton v. Smith*, 13 Pet., 464.)

In *Myer v. Tupper* (1 Black., 522), it was held that where respondents purchased without notices of a lien for repairs or supplies in a foreign port, their want of caution in this respect could not deprive the libellants of a legal right they had done nothing to forfeit.

Mr. Raymond, therefore, might have pressed his remedy against the Government of Venezuela in virtue of his lien upon the vessel to the extent of his interest in case of the violation of the contract under which the Government obtained possession, or he could rely upon the personal responsibility of De Sonnevile for the debt. It is quite evident that Raymond chose the latter of these alternatives. His claim against De Sonnevile appears to have been in the hands of Venezuelan lawyers for a number of years. Finally, on April 29, 1890, De Sonnevile, in order to discharge the debt to Raymond, executed the assignment transferring the property, specified pieces of property "which represent 25,000 bolivars value, free from all incumbrances, annuity, or mortgages." And one Ascanio Negretti, lawyer, "with power of attorney from Charles Raymond," accepted this transfer. In accordance with law, this assignment was registered in the registry of Altigracia de Orituco, on May 16, 1890, and also in the French legation at Caracas on October 21, 1891. The valuation of 25,000 bolivars placed upon the property thus transferred in satisfaction of the debt is included in the instrument signed by both De Sonnevile and the representative of Raymond, and must be regarded as a part of the agreement. It equals, if it does not excel, the amount due at the time.

The acceptance of this transfer discharged the debt of De Sonnevile to Raymond and canceled any claim which Raymond might have had against the Government of Venezuela in virtue of his lien upon the steamer. The lien could exist after the debt was paid. As the assignment of the property specified was received in discharge

of a money debt due from De Sonnevile, it is in judgment of law to be considered as the same thing as if De Sonnevile had actually paid money to the amount agreed upon in the assignment as being the value of the property transferred. The subsequent depreciation in value can not operate to revive the debt.

The claim must, therefore, be disallowed.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of the heirs of Charles Raymond, deceased, claimants,	} No. 51.
v. THE REPUBLIC OF VENEZUELA.	

Doctor GRISANTI, *Commissioner*:

Elizabeth Wild Raymond, widow of Charles Raymond, deceased, Anna J. Raymond, Elizabeth E. Raymond, Letitia J. Raymond, Florence A. Raymond, Edwin J. Raymond, Charles J. Raymond, and Victoria R. Gauche (née Raymond), children of said Charles Raymond, deceased, claim of the Government of Venezuela payment for \$78,520 as capital and interests of a credit which they, sole heirs at law of the mentioned Charles Raymond, deceased, pretend holding against Venezuela.

The history of the claim is as follows:

On September 12, 1869, a contract was signed at Port of Spain between George Fitt, acting on behalf of the citizen, Gen. José Ruperto Monagas, at that time President of Venezuela, and Ovide de Sonnevile, acting as proxy for Mr. Charles M. Burns, owner of the British vessel *Irene*, in virtue of which contract Fitt chartered said vessel *Irene*, having on board 130 tons of coal, for the service of carrying troops on account of the Government of Venezuela (art. 1).

Ovide de Sonnevile received from George Fitt \$5,000 with which he paid the debts of the vessel in Port of Spain, and for which debts she was there detained (art. 2).

Both contracting parties agreed that if the Government of Venezuela decided to buy the vessel, the price should be \$30,000; if not, the vessel would continue chartered at the rate of \$100 per day for a term of no less than sixty days, it being a formal condition of said contract that the Government of Venezuela on the expiration of said term, or other term which the parties might agree to extend, should, on returning Sonnevile the vessel, pay him the 130 tons of coal above referred to, at the price the same should happen to have at the port of the Republic where the return takes place; also that he should be paid such amount as both parties might consider necessary for conducting said vessel to the harbor of Port of Spain, and also the extra pieces lost or worn out (art. 3).

In the hundred dollars per day stipulated as the rent for the *Irene* none of her expenses were included therein, all of which were on account of the Government of Venezuela; and if the vessel, during the time of her leaving Port of Spain up to that on which she was returned to Sonnevile, should be lost or suffered very serious injuries, such as to make her useless, Sonnevile should be paid her value, which before-

hand was fixed at \$30,000, and would forthwith be the property of the Republic. If the injury sustained by the vessel were of easy repair, the Government of Venezuela had the option of returning her, previously making the necessary repairs at their own expense (art. 4).

On November 23, 1869, a note was addressed to Sonnevillle by the jefe de estado mayor-general in Puerto Cabello to the following effect:

The term of the contract for chartering the vessel *Irene* having expired, and the war being over, the Citizen General President in campaign orders me to notify you thereof, so that you may this day take charge of the mentioned vessel under formal inventory, and afterwards call at the general commandance to settle your charter account, balance of coal missing to make up the 120 tons, and agree as to the amount required for your sailing to Port of Spain.

On November 24 Sonnevillle answered denying to receive the vessel if the very serious injury suffered by the vessel in one of her boilers on October 17 were not repaired unless the Government should choose to pay the price fixed on the vessel.

Afterwards a discussion followed between the Government of Venezuela and Sonnevillle in reference to the case, and steps were taken by the latter to apply to the French Government, and pretending to apply to the British Government also, for them to second his motion in the claim against Venezuela. On April 29, 1890, Sonnevillle issued a document wherein he declares to be a debtor to Charles Raymond for the amount of 12,500 bolivars which he acknowledged to have received from him to settle his (Sonnevillle's) account with the consignee of the British vessel *Irene*; and in payment for that amount he assigned to him the sole possession of several properties perfectly specified in the forementioned document.

The principal grounds whereon Messrs. Raymond lay their claim are the following:

In the year 1890, as above stated, Mr. de Sonnevillle assigned all his property to Mr. Charles Raymond, predecessor in interests of the present claimants. Neither Mr. Charles Raymond nor Mr. Sonnevillle were paid any sum of money on account of the claim.

To judge of the lawfulness or unlawfulness of this claim the following point must, above all, be examined:

Is or is not the mentioned claim included in the dedition which Sonnevillle made in payment to Charles Raymond, contained in the document drawn at Caracas on April 29, 1890, and registered in the subaltern registry office of the Monagas district on the 16th of May of the same year? In other words: Did Sonnevillle transfer to Raymond the referred-to credit against Venezuela by virtue of said dedition in payment?

The Venezuelan Commissioner is of opinion that the question put must be answered negatively without the least vacillation. Consequently, the claim not being expressly included in the dedition in payment, it is excluded from the same; because in all contracts, such as this, which have the object of alienation of property, it is an essential requisite that the goods alienated be perfectly determined.

I must not let the fact go by that some Venezuelan lawyers of undeniable knowledge argued that on the strength of the foregoing contract Charles Raymond was the owner of the claim; but such is an error, and errors have no authority however respectable the persons who incurred in them.

This erroneous opinion is undoubtedly derived from the generality

of the terms with which the dedition of payment commences. Sonnevillle says: * * * "and to pay that amount (the 12,500 bolivars) I deliver him all my present and future property, as I have no heirs, and have on the other hand my gratitude bound to Mr. Charles Raymond, to whom I am attached not only by the ties of friendship but also by those of spiritual relationship." But the amplitude and vagueness of this clause is perfectly determined and limited by the phrase following forthwith: "The goods which I give him in payment for my debt are the following." Then said goods are specified. The former generality must be interpreted in the light of this limitation, without which it would be deprived of judicial and even rational value. If there existed only the clause: "I deliver him my present and future goods," the contract would completely lack legal value. The fact is, that when the dedition in payment has the object, as in the present case, of extinguishing a pecuniary debt, no difference exists between the former and an ordinary sale; both contracts are identical. Therefore the consent of the contracting parties is an essential requisite for the existence of every contract, which must be in regard to the thing or price when it refers to buying or selling, and in regard to the debt and thing transferred for payment if it refers to a dedition in payment, and without determining these two elements consent is impossible because it lacks matter, and consequently the existence of the contract would also be impossible. Wherefore, if the dedition in payment refers to "present and future goods," with no other explication, it would never have attained judicial existence. Neither Sonnevillle would have known what he gave nor Raymond what he received; and *consent* requires *knowledge*; consent can not be given to what is not known.

If the principles and reasons stated were laid aside, and it were attempted to hold that the claim being the property of Sonnevillle he had the will to transfer it to Raymond, such assignment could have no effect against the Government of Venezuela, owing to its lack of visible existence.

Another question: Was or was not the credit of 12,500 bolivars extinguished in virtue of the assignment which, according to the public document above, refers to Charles Raymond held against Sonnevillle?

It most certainly was. That is the natural judicial effect of an assignment, and as the one in question is pure and simple, that is to say that it is not subject to any conditions either suspensive or resolatory, the mentioned extinguishing effect took place definitively and perpetually from the very moment of signing the contract.

It is alleged that no price was able to be got for the sale of the property assigned in payment and that it fell to ruin. This fact is very unlikely, as the transaction was carried out in 1890 at a time when Venezuela reached its greatest material prosperity. The property assigned in payment consisted of coffee plantations, and at that time the hundredweight of this grain was worth . . . But even admitting such allegation to be a fact, it could not revive the credit, as its extinction was complete and forever.

Before closing the undersigned begs to state a few more remarks which he considers unnecessary but not irrelevant.

In the charter party of the vessel *Irene*, Sonnevillle appears acting as

proxy for Charles M. Burns, british subject; the latter then is the real charterer and the only owner of the rights acquired as such.

When Sonnevile thought that France might tender him some protection he addressed the French consul at Caracas (December 12, 1888); then the Venezuelan-French Mixed Commission, which at that time was sitting here (April 6, 1890); then the minister of foreign affairs of the French Republic (May 8, 1890), requesting his help and advising the latter besides, that if the intervention of his Government be considered unlawful he should forward the documents to the minister of foreign affairs of Great Britain with the view already mentioned. The request having purely and simply been denied by the French Government, and the documents returned to Sonnevile, the claim arises out of the hands of the present solicitors, not out of its own dust, as the phoenix of the fable, but out of nothing, that is to say, out of a dedition in payment which is not contained in it.

In virtue of the reasons explained, it is the opinion of the Venezuelan Commissioner that the referred-to claim must be entirely disallowed.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of the heirs of Charles W. Raymond, deceased,	} Claim No. 51.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

The above-entitled claim is disallowed.

WILLIAM E. BAINBRIDGE,
Commissioner on the Part of the United States of America.

CARLOS F. GRISANTI,
Commissioner on the Part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

EDUARDO CALCANO SANAVRIA,
Secretary on the Part of Venezuela.

RUDOLF DOLGE,
Secretary on the Part of the United States of America.

Delivered November 11, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA, ON BEHALF of William H. Volkmar, claimant,	} No. 52.
<i>v.</i> THE REPUBLIC OF VENEZUELA.	

This claim was presented to the Commission on the memorial of the claimant, and was supported at the time of presentation by the

agent of the United States in an oral argument. A brief was filed by the agent of Venezuela in answer and a brief was filed by the agent of the United States in replication.

[Translation.]

WILLIAM H. VOLKMAR }
 v. } No. 52.
 VENEZUELA. }

ANSWER.

Honorable Members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of Venezuela, has studied the claim presented by the American citizen, William H. Volkmar, and respectfully shows to this tribunal:

The claim in question depends for its foundation upon certain damages suffered by the electric-light plant which the claimant has in operation at Puerto Cabello, caused during the attack which the forces of the revolution called "Legalista" made upon said city in the year 1892.

Mr. Volkmar presented his claim to the board of public credit charged with examining, qualifying, and admitting the liabilities against said revolution, but he did so neglecting certain formalities exacted by the law in this matter, on account of which the board found itself obliged to disallow it. The claimant did not care to or could not correct the fault under which his claim labored, notwithstanding the long period which was granted for that, until, on the 14th of April, 1896, a law was passed by the National Congress, article second of which contained this paragraph:

First. The records for the debt of the revolution which, by the 30th of June of the present year, may not have been completely legalized, as well as the debts on account of "the floating debt" which, upon the same date, shall not have been reclaimed, shall be canceled by the board of public credit in the presence of the attorney-general of the nation, the corresponding acts to effect which shall be executed.

Nor did the claimant then avail himself of the new and definite extension which the said disposition granted, and it is clear that, having submitted himself in everything that concerned his claim to the Venezuelan laws, by the sole fact of his having addressed himself to the said board of public credit, his right was extinguished, and he has none now to claim before this honorable Commission, since it was his own fault that he lost it.

Besides, it is evident that the claimant consented to this decision, because until now he has not begun to press the matter either before the Venezuelan authorities or before the representative of his Government, which gives rise to a very strong presumption of the abandonment of his claims.

On the other hand, the injuries alleged were caused during a civil war and in the attack made upon a city. It is well known that in these cases foreigners are not authorized by international law to claim indemnities, because as such right is not conceded to the nationals an odious distinction would be involved, an intolerable privilege established in favor of the former with manifest injustice to the latter. As upon other occasions, the undersigned has had the honor to demonstrate, civil war, in the opinion of eminent writers, is likened in its

effects to the causes of force majeure. It is a calamity whose deplorable consequences must affect equally nationals and foreigners.

Besides the arguments based upon the law which the undersigned has just made, there are other considerations, the exactness and truth of which an inspection would demonstrate, to qualify, as exaggerated at least, the present claim. The electric light plant of Puerto Cabello and its entire installation are not worth the amount claimed. It is a primitive installation, one of the first which were ever employed and which are now completely out of use. It was brought, according to personal reports obtained by your narrator, from the United States, where it had seen long and protracted service in one of the cities. Its age is sufficient reason for the irregularity of its service, which has afforded the motive for frequent claims on the part of the municipality concerning which the undersigned can testify since he has been a member of that corporation, and especially because he has negotiated said matters with the claimant.

For all the reasons above expressed the claim ought to be disallowed.
Caracas, August 16, 1903.

F. ARROYO PAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of William H. Volkmar, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 52.
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REPLICATION ON BEHALF OF THE UNITED STATES.

The United States has presented in the above-entitled matter the claim of W. H. Volkmar, a native citizen of the United States, amounting to 84,160 bolivars, for damages to his electric-light plant, and for materials destroyed in the revolution known as "Legalista," in the year 1892. This revolution overthrew the existing government and established itself in power as the de facto government of Venezuela, and subsequently established a board of public credit charged with examining and deciding claims arising out of the revolution.

The claimant took the necessary proceedings before the court of first instance at Puerto Cabello to prove his claim, and filed these proceedings with the board of public credit. The original documents in the proceedings, as requested, have been presented to this honorable Commission by the Republic of Venezuela. They were prepared with great care and set forth in detail the damages suffered by the electric-light plant. These damages are proven by the testimony of witnesses, and as there was no fiscal to represent the Government of Venezuela in these proceedings, the judge of the court was authorized to examine the witnesses and ascertain the facts. The proceeding therefore was entirely regular and in conformity with the procedure of Venezuelan courts. The evidence thus taken was, as has been stated, submitted to the board of public credit, where the Government of Venezuela had the opportunity of disproving the allegations in the claim. No action was taken by Venezuela in this matter, but the claim was finally

rejected by the board. The claimant now comes before this honorable tribunal in accordance with the terms of the protocol and presents his claim for adjudication.

In the answer of Venezuela it is contended that the claimant did not conform to the requirements of the board of public credit, and that not having sustained his case before that body he may be considered as having abandoned it. Such technical requirements as may have been held necessary by this board do not in anywise bar the claimant from proceeding before this tribunal, which has been constituted with the object of examining and deciding all claims owned by citizens of the United States which have not been settled by diplomatic agreement or by arbitration. By virtue of the protocol entered into between the Government of the United States and the Government of Venezuela this claimant has a perfect right to come before this Commission for an adjudication of his claim.

We submit that Venezuela, having had the opportunity of appearing before the board of public credit and disproving the claim in whole or in part, and not having done so, the claim can be regarded as having been proved.

The evidence taken before the court of first instance of Puerto Cabello in this matter sufficiently establishes the loss of the property of the claimant, and an award should be made for the full amount claimed, with interest from the date of presentation of the claim to the Venezuelan Government.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of William H. Volkmar, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 52.
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DECISION AND AWARD.

Opinion by Bainbridge, Commissioner.
The Commission disallows the claim.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of William H. Volkmar, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 52.
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BAINBRIDGE, *Commissioner.*

The claimant is a native citizen of the United States, residing in the city of Puerto Cabello, Venezuela. In the year 1892 he was the sole owner of the electric-light plant of that city. On the 22d, 23d, and

24th of August, 1892, the forces of General Crespo, who was engaged in a revolution, ultimately successful, against the then existing government, attacked the city of Puerto Cabello, and during the engagement the power house, lines, lamps, and machinery of the claimant suffered damage amounting, as claimed, to the sum of 84,160 bolivars, for which sum, with interest, an award is asked.

The evidence presented in support of this claim is amply sufficient to prove the fact and nature of claimant's loss. But it fails to establish any liability on the part of the Government of Venezuela therefor. It is perfectly clear that the losses complained of were the result of military operations in time of flagrant war, and for such losses there is, unfortunately, by established rules of international law, no redress. Such losses are designated by Vattel as "misfortunes which chance deals out to the proprietors on whom they happen to fall," and he says that "no action lies against the state for misfortunes of this nature, for losses which she has occasioned, not willfully, but through necessity and by mere accident in the exertion of her rights."

As a principle of international law, the view that a foreigner domiciled in the territory of a belligerent can not expect exemption from the operations of a hostile force is amply sustained by the precedents you cite, and many others. Great Britain admitted the doctrine as against her own subjects residing in France during the Franco-Prussian war; and we, too, have asserted it successfully against similar claims of foreigners residing in the Southern States during the war of secession. (Mr. Evarts, Secretary of State, to Mr. Hoffman July 18, 1879, Wharton's Int. Law. Dig., sec. 224.)

"The property of alien residents," says Mr. Frelinghuysen, Secretary of State, "like that of natives of the country, when 'in the track of war,' is subject to war's casualties." (Wharton Int. Law. Dig., sec. 224.)

The rule that neutral property in belligerent territory is liable to the fortunes of war equally with that of subjects of the state applies in the case of civil as well as international war. In Cleworth's case, decided by the American and British Claims Commission of 1871, a claim was made for the value of a home destroyed in Vicksburg by shells thrown into the city by the United States forces during the bombardment. The commissioners said, "The United States can not be held liable for any injury caused by the shells thrown in the attacks upon Vicksburg." And the same principle was applied in the case of *James Tongue v. The United States* to a claim for property destroyed by the bombardment of Fredericksburg on the 11th, 12th, and 13th days of December, 1862. (Moore Int. Arb., 3675.)

In view of the foregoing considerations the claim must be disallowed.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

AWARD.

THE UNITED STATES OF AMERICA ON BEHALF of William H. Volkmar, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 52.
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The above-entitled claim is disallowed.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

CARLOS F. GUISANTI,
Commissioner on the part of Venezuela.

Attest to award.

HARRY BARGE, *President.*

Attest.

EDUARDO CALCANO SANAVRIA,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered October 31, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America
and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Flannagan, Bradley, Clark & Co., claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 53.
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This claim was presented to the Commission on the memorial of the claimants and the pleadings as presented to the former United States and Venezuelan Claims Commissions. The agent of the United States could not locate any of the claimants or their representatives, and he was unable to obtain any additional information. A brief was filed by the agent of Venezuela in answer, and a brief was filed by the agent of the United States in replication.

[Translation.]

FLANAGAN, BRADLEY, CLARK & CO. v. VENEZUELA.	}	Claim No. 53.
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ANSWER.

Honorable Members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the United States of Venezuela, has studied the claim presented by the American citizens Flanagan, Bradley, Clark & Co., and very respectfully sets forth before you:

This claim, as it has been presented to this honorable tribunal, was submitted to the mixed commission of 1890, whose members disallowed it, deeming it unfounded, as is shown by the opinions of the respective commissioners; and it is therefore a matter that has come to have the force of *res judicata*.

It can not be conceived what motives can be adduced at this time for reviving the claim, since the expression "without prejudice," used in the judgment alluded to, must necessarily be understood in the sense that it may be resubmitted before local tribunals, but on no account before mixed commissions similar or analogous to the one which determined it. The undersigned would call attention anew to all the reasons upon which the decision of the commission of 1890 was based, and which are shown in the work containing the findings of that tribunal, edited by the Government of the United States, in the same year, at pages 425 to 456, and finally invokes the force of *res judicata* in order that the claim may be disallowed.

Caracas, August 31, 1903.

F. ARROYO FAREJO.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Flannagan, Bradley, Clark & Co., claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 53.
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REPLICATION ON BEHALF OF THE UNITED STATES.

In the answer of Venezuela, in the above-entitled matter, it is contended that, because of the dismissal of this claim before the United States and Venezuelan Claims Commission which sat at Washington in 1890, without prejudice to its prosecution elsewhere, the matter has come to have the force of *res judicata*.

In reply to this contention we submit that the dismissal of this claim by the commission of 1890 was for want of jurisdiction only and is not a bar to a final adjudication of the claim. The contention of Venezuela that in dismissing this claim the commissioners must necessarily have determined the merits of the case, and that the dismissal "without prejudice" must be understood in the sense that it should be submitted to the local tribunals and on no account before mixed commissions similar or analogous to the one which dismissed it, are propositions too manifestly unreasonable to need further discussion. The principle is recognized by every code of municipal law and is basic to international or public law as well, that, in order to constitute a bar or an adjudication of the claim there must have been a hearing and decision upon the merits, and that a dismissal for want of jurisdiction—which is for want of power to hear or determine a claim—necessarily means that the commission did not hear or decide the merits of the case.

The powers of the present Commission are, moreover, expressly extended by the protocol to include all claims owned by citizens of the United States. Upon this power there is no limitation or restriction

whatsoever. If a claim exists in favor of a citizen of the United States, this Commission has the power to consider and determine it, and hence necessarily to consider and determine whether there is or is not a valid claim.

There can, therefore, be no good objection to interpose to the trial and determination of this claim by the present Commission.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Flanagan, Bradley, Clark & Co., claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 53.
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DECISION.

The Commission disallows the claim.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

* THE UNITED STATES OF AMERICA ON BEHALF of Flanagan, Bradley, Clark & Co., claimants, v. THE REPUBLIC OF VENEZUELA.	}	No. 53.
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By the COMMISSION:

This claim was submitted to the United States and Venezuelan Claims Commission organized under the convention of December 5, 1885, in whose report (pp. 425-456) an able and exhaustive discussion of the facts and the law appertaining to the case will be found. The commissioners were practically unanimous that the claim should be disallowed, although it would appear that it was finally "dismissed without prejudice" on the ground that certain documents called for had not been produced.

Referring to the claim, Mr. Commissioner Little says:

I see in the papers here no sufficient basis for the principal claim of Flanagan, Bradley, Clark & Co. They complain that Venezuela conscripted the laborers, citizens of that country, at work on the railroad, and took their implements for military purposes, thereby stopping the improvement; that she failed to pay her stock subscription at maturity; that the occupation of La Guaira by the rebels subjected them to heavy demurrage; and that because of these things they were compelled to abandon the railroad enterprise and sell their interest therein at a sacrifice. Venezuela was then in the throes of civil war. Her right of conscription and appropriation for military purposes were fundamental. All contracts and enterprises were subject to it. The depleted treasury and failure to meet her obligations to the railroad company must be looked upon as a consequence. Individual indirect losses always inevitably result from such a situation, yet they are without remedy. This claim in its ultimate analysis, in so far as it pertains to indirect damages, seems to be of that character—one occasioned by the accidents of war and for which governments can not be held liable. In so far as it relates to tools, implements, and other property of the firm appropriated by Venezuela, there would be a remedy. But there is no specific

allegation of damage in this regard, and no evidence showing the character or value of the articles taken.

The present Commission is entirely in accord with this view.
The claim is hereby disallowed.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Flanagan, Bradley, Clark & Co., claimants, v. THE REPUBLIC OF VENEZUELA.	} No. 53.
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DECISION.

The above-entitled claim is hereby disallowed.

WILLIAM E. BAINBRIDGE,
Commissioner on the part of the United States of America.

J. DE J. PAÚL,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

J. PADRON-UZTARIZ,
Secretary on the part of Venezuela.

RUDOLF DOLGE,
Secretary on the part of the United States of America.

Delivered September 18, 1903.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Elias A. de Lima, Elias S. A. de Lima, and Edward de Lima, partners as D. A. de Lima & Co., claimants, v. THE REPUBLIC OF VENEZUELA.	} No. 54.
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BRIEF ON BEHALF OF THE UNITED STATES.

The United States presents in this case the claim of D. A. de Lima & Co. for damages in the sum of \$70,000, with interest, at the rate of 6 per cent per annum from the 1st day of August, 1901, arising out of the destruction of the property of Quiterio Henriques, a citizen of the Republic of Venezuela, resident in the city of Coro, who had given a mortgage of his real and personal property to said claimants to secure his indebtedness to them.

STATEMENT OF FACTS.

During the years 1901, 1902, and 1903 Quiterio Henriques was indebted to the claimants in the sum of \$70,000 United States gold, and as security for the payment of this indebtedness in or about the month of August, 1901, Henriques executed and delivered to the claimants a mortgage for that amount covering all of his real and personal property, which consisted of houses in the city of Coro, haciendas at various places in the Republic of Venezuela, together with personal property, such as farin animals, agricultural implements and machinery, growing crops and goods, wares and merchandise stored in warehouses, which mortgage was conditioned upon the payment of his indebtedness to the claimants. This mortgage was duly registered in the office of the proper official in the city of Coro.

In the month of June, 1903, the armed forces of the Government, numbering four or five thousand men, in pursuit of revolutionary forces, encamped upon the hacienda of Hueques, which was one of the most important pieces of property upon which the claimants relied for their security. The Government forces destroyed or drove away all of the beasts of burden and turned loose upon the plantation the saddle horses and mules of the revolutionary forces, injuring the growing crops. In addition, the forces of the Government destroyed all of the sugar cane, corn, and other growing crops, and the machinery used for crushing sugar cane, as well as a large number of agricultural implements, and confiscated a large and valuable stock of goods, wares, merchandise, and bags of coffee stored in warehouses. In addition to the destruction of property, the governmental forces compelled Henriques to make a forced loan to the Government of \$5,000. The total value of the property destroyed or confiscated was \$80,000.

Neither Quiterio Henriques nor the claimants herein were ever engaged in rebellion against the Republic of Venezuela, nor did they adhere to the revolutionists nor ever give them any aid or support.

Because of the acts of the forces of the Government, the claimants have been deprived of the security for the payment of their mortgage, with the proceeds of which they were to have the indebtedness of Henriques paid.

As appears by the affidavit of Elias A. de Lima, here submitted in evidence, the claimants had no information of the acts of the Government of Venezuela, complained of, until the month of July, 1903, which accounts for the lateness of the presentation of this claim.

II.

The Government of Venezuela is responsible for the acts of its forces in impairing the security upon which the claimants depended for the payment of the indebtedness to them.

The acts complained of were done by the Government troops of Venezuela, under the direct authority and supervision of their officers, and there can be no question as to the liability of the Government in such case. The rule of international law in this respect is laid down in Moore's International Arbitrations, Volume III, pages 2952 and 2953, and cases collected in Volume IV, pages 3714 et seq.

If the property taken was for the use and support of the Government troops, under the authorities there can be no question as to the liability of the Government to render compensation for the value of the property so taken. The same is true as to so much of the property as may be said to have been destroyed and not taken for the use of the troops. See the rule laid down in Shrigley's case, Moore's International Arbitrations, Volume IV, pages 3711 and 3712.

III.

An award should be made for the full amount claimed.

The losses complained of being the result of acts for which the Venezuelan Government is responsible, an award should be made for the full amount.

Respectfully submitted.

ROBERT C. MORRIS,
Agent of the United States.

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of Elias A. de Lima, Elias S. A. de Lima, and Edward de Lima, partners, as D. A. de Lima & Co., claimants,	} No. 54.
v. THE REPUBLIC OF VENEZUELA.	

This claim was presented by the agent of the United States with the foregoing brief in support, on September 1, 1903, by consent of the Commission and under the ruling that additional depositions then being taken by the representatives of the claimants at Coro should be filed on or before September 30, 1903, and that the right of the agent of Venezuela to file an answer should run from the date of the receipt of such depositions by the Commission (Min., p. 109).

On October 13, 1903, this claim was withdrawn by the representative of the claimants through the United States legation at Caracas (Min., p. 141).

Before the Mixed Commission organized under the protocol of February 17, 1903, between the United States of America and the Republic of Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of J. B. F. P. Monnot, claimant,	} No. 55.
v. THE REPUBLIC OF VENEZUELA.	

This claim was presented to the Commission on September 15, 1903, by the legation of the United States at Caracas.

The Commissioner on the part of Venezuela objected to the filing of this claim. Decision was reserved until the next session of the Commission to enable the agent of Venezuela to file his objections (Min., p. 119).

At the next session of the Commission the Commissioners heard the objections of the agent of Venezuela and disagreed on the question of permitting the claim to be filed. The matter was then referred to the umpire, who allowed the claim to be filed (Min., p. 123).

Honorable Members of the Venezuelan-American Mixed Commission:

The undersigned, agent of the Government of Venezuela, in reference to the claim of Mr. J. B. Monnot, presented at the last session, respectfully shows to the tribunal:

Whereas Article II of the protocol signed at Washington authorized the honorable arbitrators to concede terms of grace in the presentation of claims as decided at the session of July 1, and that the honorable agent of the Government of the United States petitioned and was granted by the court an adjournment with the object of completing and presenting definitely the claim which was then left inactive, and that said adjournment terminated the 21st of July last without the presentation above referred to being effected, and without any presentation whatsoever being made on account of the agent of the United States, for this reason the undersigned judges that the time has elapsed for the presentation of this claim, and that the Commission must refuse it.

The excuse set forth by the claimant is not admitted, being a venturesome pretext, since the circumstance of the State of Bolivar being without communication by reason of the recent political events was not an impediment such as might prevent the previous claim which has representation before the Commission, as is shown by succeeding events in that same State.

For the reasons above set forth the Venezuelan agent respectfully opposes the admission to consideration of the new claim presented.

Caracas, September 17, 1903.

F. ARROYO PAREJO.

[Translation.]

J. B. F. P. MONNOT	}	Claim No. 55.
v.		
VENEZUELA.		

ANSWER.

Honorable Members of the Venezuelan and American Commission:

The undersigned, agent of the Government of the United States of Venezuela, has studied the claim presented by the American citizen J. B. F. P. Monnot, and respectfully informs the tribunal:

The claim in question does not appear to have other foundation than the capricious assertion of the claimant, who pretends that the Venezuelan Government must indemnify him for the poor success of his business.

From the documentation exhibited it can be seen that the Venezuelan authorities at all times endeavored to enforce the rights which the

claimant alleged, and in the pleadings no proof exists of any formal or concrete act on the part of the authorities which may have injured the interests of the claimant. Therefore the undersigned can not enter into a discussion of a claim which lacks absolutely all foundation of such.

Besides, Mr. Monnot was only a lessee of the Orinoco Company, Limited, and if any resistance existed to prevent him from the peaceful enjoyment of his rights, he should have addressed himself against said company, but never against the Venezuelan Government with whom he never had contracted.

The alleged basis upon which this claim is founded thus being disproved both in fact and in law the claim must be rejected.

Caracas, October 7, 1903.

(Signed)

F. ARROYO PAREJO.

The United States and Venezuelan Claims Commission, sitting at
Caracas, Venezuela.

THE UNITED STATES OF AMERICA ON BEHALF of J. B. F. P. Monnot, claimant, v. THE REPUBLIC OF VENEZUELA.	}	No. 55.
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DECISION.

The evidence presented in support of the above-entitled claim being insufficient to establish any liability on the part of the Republic of Venezuela for the losses and injuries complained of, the said claim is hereby disallowed.

RUDOLF DOLGE,
Commissioner on the part of the United States of America.
CARLOS F. GRISANTI,
Commissioner on the part of Venezuela.

Attest to decision:

HARRY BARGE, *President.*

Attest:

EDUARDO CALCARIO SANAVRIA,
Secretary on the part of Venezuela.

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